

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

74-1037

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

v.

JOHN CAPRA, LEOLUCA GUARINO and STEPHEN DELLACAVA,

Defendants-Appellants.

On Appeal from Judgment of Conviction from the United States
District Court for the Southern District of New York

Appendix

(Vol. VI — Excerpts from Trial Transcript
Pages rsg, jbk 95-1293, 1516-3470)

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(In open court; jury present.)

ROBERT E. JOHNSON, resumed.

THE COURT: I am told that one or more of the jurors is interested in the question of whether it is all right to take notes. The short answer to that question is yes. The longer answer is that if you take notes, you must use them only for yourself, that is, some people remember better without notes, some people remember better with notes. But each of you is entitled to rely on your own recollection, so please don't use a note, if you take it, as if it were evidence and say my view of what was said is correct because I wrote it down. You might write it down incorrectly. But with that understanding, if you wish to take notes, you are certainly permitted to do so, and if you need a piece of paper, Mr. Swancinger may be able to generate that.

Mr. Feitell.

CROSS-EXAMINATION (continued)

BY MR. FEITELL:

Q Mr. Johnson, did you discuss this case with anybody over the lunch hour?

A No -- I talked to my former partner, yes, sir.

Q Mr. Kostecke?

1
2 A Yes, sir.

3 Q He is going to testify next, right?

4 A Yes, sir.

5 Q You told him what had happened in the courtroom
6 here, correct?

7 A No, sir, not really.

8 Q You didn't talk about the case at all?

9 A I mentioned the fact that I had been on cross-
10 examination for about 15,20 minutes.

11 Q You didn't tell him anything about what happened,
12 right?

13 A No, sir.

14 Q And he didn't ask you either, right?

15 A No, sir.

16 Q You talked about other things, right?

17 A Yes, sir.

18 Q And you went to lunch with him?

19 A Yes, sir.

20 Q And you spent approximately over an hour with
21 him, correct?

22 A More like half an hour, sir.

23 Q Now, the key that was utilized to open and lock
24 the filing cabinet in the State Police Post, who gave that
25

1
2 to you?

3 A I don't recall, sir.

4 Q Do you know if the person who gave it to you had
5 another key?

6 A I asked if that was -- I asked if that was the
7 only key, I recall that, and it was.

8 Q He told you that was the only key?

9 A Yes, sir.

10 Q Did he tell you that was the only key that he
11 had?

12 A No, sir, he said it was the only key.

13 Q That was a normal filing cabinet such as you
14 see in any office, is that correct?

15 A Yes, sir.

16 Q To your own knowledge, could you tell us, to
17 a certainty, that there were no other keys for that filing
18 cabinet?

19 A Not to a certainty, no, sir.

20 Q After you put the material in the filing cabinet,
21 you left that room, is that correct?

22 A Yes, sir.

23 Q And you left with your brother officer, is that
24 correct?
25

1
2 A Pardon me?

3 Q You left with Mr. Kostacke?

4 A Yes, sir.

5 Q And you went ahead and did something?

6 A Yes, sir.

7 Q In connection with the case?

8 A Yes, sir.

9 Q And you did it at another place, correct?

10 A At the airport, sir.

11 Q When did you get back to that filing cabinet?

12 A Approximately one hour later, sir.

13 Q Now, it is the time thereafter that the testing,
14 this field test, that you performed, took place, is that
15 correct?

16 A Yes, sir.

17 Q Where did the field test take place?

18 A In the Detroit regional office.

19 Q And that is the office that you regularly worked
20 out of, is that correct?

21 A Yes, sir, that is correct.

22 Q And you have a desk there?

23 A Yes, sir.

24 Q And you have safes there?

25 A Yes, sir.

1
2 Q And you have filing cabinets there too?

3 A Yes, sir.

4 Q With locks on them?

5 A Yes, sir.

6 Q And you had this field test kit that you used?

7 A Yes, sir.

8 Q And you utilized the procedures right there in
9 your own office, right?

10 A Yes, sir.

11 Q Now the solution that you threw away, after
12 you made the test --

13 A Yes, sir.

14 Q -- where did you throw it?

15 A In the wastebasket.

16 Q What happened next with that plastic bag?

17 A After the field test?

18 Q And its contents, after the field test.

19 A It was placed in a lock seal envelope, in the
20 office safe.

21 Q Who put it in the office safe?

22 A I did, sir.

23 Q When was the next time you saw it?

24 A The next morning.

25 Q Somebody else open that safe for you?

1
2 A No, sir.

3 Q You opened it yourself?

4 A Yes, sir.

5 Q What happened with the bag?

6 A What happened?

7 Q At that time.

8 A At that time I took it out, put it in an envelope
9 addressed to the Chicago regional laboratory, and took it
10 downstairs to the post office and mailed it to our Chicago
11 regional laboratory, air mail special delivery, return
12 receipt requested.

13 Q Did you get the receipt back?

14 A Yes, sir.

15 Q Do you have it?

16 A Not with me, sir.

17 Q You didn't bring it to court?

18 MR. FELD: Objection, your Honor.

19 THE COURT: Sustained.

20 Q Do you know what the population of the city of
21 Detroit is?

22 MR. FELD: Objection.

23 THE COURT: What is the relevance?

24 MR. FEITELL: Withdrawn.

25 Q You had to send the bag and its contents to Chicago

1
2 to have it properly tested, isn't that so?

3 A That's correct, yes, sir.

4 Q Because there were no facilities in the city of
5 Detroit that you could have used to have the proper testing
6 carried out, is that correct?

7 MR. FELD: Objection, your Honor.

8 THE COURT: What is the relevance of this?

9 MR. FEITELL: Well, I am trying to show through
10 this witness, your Honor, that the problem of carrying out
11 adequate testing of suspect drugs calls for sophisticated
12 laboratory procedures which were not available in this city,
13 so that the goods or merchandise or whatever it is, the
14 substance, had to be relinquished and sent to a distant city
15 to have proper sophisticated tests carried out.

16 THE COURT: Sustained. He has testified it was
17 sent. Whether it had to be or not, you may go on from there.

18 Q And when the substances were sent to Chicago
19 they were sent to a laboratory which is outfitted with
20 equipment that you don't have, right?

21 A Yes, sir, that is correct.

22 Q You are not a chemist by trade, are you?

23 A No, sir, not at all.

24 Q And to your knowledge, is the forwarding of the
25

2 suspected narcotic substances a rather regular procedure
3 from Detroit to Chicago?

4 A Extremely regular.

5 Q Extremely regular. And in some instances you
6 have found, too, have you not, that when substances are
7 sent to Chicago it turns up after testing that they didn't
8 contain narcotics, is that correct?

9 MR. FELD: Objection, your Honor.

10 THE COURT: Sustained.

11 Q Chicago receives substances or suspected nar-
12 cotic substances from all over the middle west, isn't
13 that so?

14 MR. FELD: Objection.

15 THE COURT: I will allow it.

16 A Yes, sir, that is true.

17 Q When for the next time did you see Exhibits 1B
18 and C for identification?

19 A Today, sir.

20 Q So the last time you saw it was when you mailed
21 it?

22 A Yes, sir.

23 Q Incidentally, who packaged this?

24 A Who packaged it?

25 Q Who packaged it for mailing?

1
2 A I did.

3 Q You brought it to the post office yourself, is
4 that your testimony?

5 A Yes, sir, that is correct.

6 Q And the return receipt requested, you were the
7 one who asked for that?

8 A Yes, sir.

9 Q And you paid for it, right, you laid out the
10 funds to have that done at the post office?

11 A No, it goes by official Government mail.

12 Q By official Government mail?

13 A Yes, sir.

14 Q Through the post office system, right?

15 A Yes, sir.

16 Q Through the postal system?

17 A Yes, sir.

18 Q You took it to a certain post office, is that
19 what you did?

20 A The post office located in the Federal Building
21 in Detroit.

22 Q That is what I am asking you, you do it there?

23 A Yes, sir.

24 Q Did you or somebody else from your office take
25

1
2 it down and mail it?

3 MR. FELD: Objection, your Honor, it has been
4 asked and answered.

5 THE COURT: Sustained.

6 Q Is it your testimony that you yourself mailed
7 it?

8 A Yes, sir.

9 MR. FELD: Objection, your Honor.

10 THE COURT: Well, Mr. Feitell, stop repeating.
11
12
13
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25

End 1 PM

Q Did you get a receipt from the postal authorities?

A Yes.

Q Do you have it with you?

THE COURT: Mr. Feitell, will you please stop repeating.

MR. FEITELL: I didn't ask that. I asked another question. That is the return receipt requested.

THE COURT: I am sorry, some of these seem to be less major than others. But did you get a receipt?

THE WITNESS: Yes, sir.

Q Do you have it with you today?

MR. FELD: Objection.

THE COURT: I will allow it.

Q Do you have it with you?

A No, sir.

MR. FEITELL: No further questions.

MR. FELD: I have no redirect examination.

MR. LEVENSON: Your Honor, may I ask one or two questions based on this cross examination?

MR. FELD: I object to that, your Honor.

THE COURT: No, you may not ask any questions based on this cross examination.

MR. LEVENSON: I completed my cross examination and I was under the impression that Mr. Feitell would not

ask any questions.

THE COURT: I am going to keep him to his order from now on but come up to the bench and tell me why you want to ask questions. I want to start out with certain ground rules that are going to limit us to some extent here.

(At the side bar.)

THE COURT: Mr. Feitell, you told us you had no cross examination and you took 25 minutes of afterthought cross examination. Let us not have that happen anymore.

MR. FEITELL: I won't do it again.

THE COURT: Mr. Levenson, what is your problem?

MR. LEVENSON: I would like to inquire as to whether he ever saw Simms or Harris before this incident on November 5.

THE COURT: No, you may not. That is not based on Mr. Feitell's cross examination.

MR. SLOTNICK: Your Honor, you indicated that you would hold us to the order named in the indictment. If the attorneys are agreed on a certain order for a certain witness may we deviate?

THE COURT: Yes, you may. Tell me in advance.

MR. SLOTNICK: All right.

(In open court;)

1 rsg 3

2 THE COURT: You are excused, Mr. Johnson.

3 (Witness excused.)

4 MR. FELD: The government calls Thomas S. Kostecke.

5
6 T H O M A S S . K O S T E C K E , called
7 as a witness on behalf of the government being
8 first duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. FELD:

12 Q Mr. Kostecke, how are you employed?

13 A I am employed as a special agent with the
14 Department of Justice, Drug Enforcement Administration.

15 Q How long have you been a special agent?

16 A Over five years.

17 Q Where are you currently assigned?

18 A Detroit, Michigan.

19 Q What are your duties, briefly.

20 A Briefly, my job is to investigate narcotic
21 violations and to enforce the laws, develop cases in that
22 area.

23 Q Do you know an individual named Earl Sims?

24 A Yes, I do.

25 Q Do you know an individual named George Harris?

1
2 A Yes, I do.

3 Q Is Mr. Harris present in the courtroom?

4 A Yes, he is.

5 Q Will you identify him, please?

6 A He is the fourth man from the end of the table
7 on this side with the beard.

8 MR. FIELD: May the record reflect that the
9 witness has correctly identified the defendant Harris.

10 Q Directing your attention to November 5, 1970,
11 were you engaged in the performance of your official
12 duties?

13 A Yes, I was.

14 Q On that day were you conducting a surveillance?

15 A I was.

16 Q Where?

17 A At the Detroit metropolitan airport.

18 Q At approximately 6:10 p.m. where were you
19 positioned?

20 A At that time I had myself positioned at the
21 American Airlines Flight Arrival and Departure Section
22 of the airport.

23 Q What did you observe at that time?

24 A At approximately 6:10 I observed Earl Simms
25 go to the ticket counter, appear to have a ticket validated

and then board the plane.

Q What flight was that?

A That was American Flight 630 and my recollection is he was carrying a briefcase, an attache case, grey.

Q Grey?

A Yes.

Q Approximately 6:20 p.m., 10 minutes later, what if anything did you observe?

A At that time I observed George Harris go to the same ticket counter, have a ticket validated, and then board American flight 630 which by the way was bound for New York City, departing at approximately 6:27 or 6:30.

Q Did you maintain surveillance until it departed?

A Yes, I did.

Q About 6:30 that was?

A Yes, sir.

Q Directing your attention to December 8, 1970, were you conducting a surveillance at the airport that day?

A Yes, I was.

Q During the afternoon of December 8 where were you positioned?

A Well, at approximately 2:30 pm I was across from what was known as the short term parking lot at the

Metropolitan Airport.

Q What did you observe at that time?

A In the parking lot I observed a 1969 white over blue Cadillac El Cabalero, a customized Cadillac parked in the parking lot and I knew this vehicle to be used by one Earl Simms who I had seen drive this vehicle on a couple of occasions.

This car was registered to Lester Ramsey.

Q Did your surveillance continue into the evening of that day?

A Yes, it did.

Q Approximately 10 minutes after 9:00 where were you positioned?

A Again, I was positioned at the American Airlines flight arrival and departure section of the airport.

Q What, if anything, did you observe at that time?

A At that time I observed Earl Simms, Eugene Brown and two females --

Q What were their names?

A Willa Mae Smith and Sylvia Darcevil, deplane I believe from Flight 345 just arrived from New York.

Q What, if anything, did Mr. Simms have with him?

1 A Mr. Simms was carrying a maroon and black
2 type of box, colored box, secured by string in one of
3 his hands.
4

5 Q What happened after they were leaving the
6 airplane area.

7 A Well, from that area they went down to the
8 baggage claim section of the terminal building,
9 claimed his luggage and then exited the terminal building,
10 which time they put the luggage on a baggage loading type
11 of cart and Simms handed the box he had in his hand to
12 WillaMae Smith.

13 At this time Simms and Brown departed heading
14 for the short term parking lot.

15 Q What did you do?

16 A I went by another way to the parking lot to
17 advise agent Johnson, who had been stationed there, that
18 they arrived.

19 On the way down there I happened to come across
20 Michigan State Police Officer or Detective Chester
21 Romatowsky and I asked his help in this matter.

22 Then both of us went to where Agent Johnson
23 was inside of the government vehicle, across the street
24 from the parking lot. Went inside and when we got there,
25 I had seen Brown and Simms already at their car, at the

1969 Cadillac.

Q After you observed them there, what happened?

A Well, they appeared to be changing a tire or something along that nature.

Agent Johnson and myself discussed what we were going to do. It was decided he would remain there and myself and the detective would return to the lower section of the terminal building, where the two females were and where the baggage had been left.

Q Did you do that?

A Yes, we did.

Q What happened when you arrived there?

A Well, I saw the two females standing there next to the baggage and the cart with the bags and the box that Simms handed to Willa Mae Smith, it had been placed apparently by her on top of the bags on the cart.

A short time after that, I observed the 1969 Cadillac to arrive in front of this exit. Simms and Brown to exit the vehicle, open the trunk and putting it in the trunk when we placed him under arrest.

Q Tell us what happened to the people placed under arrest and this particular box?

A Agent Johnson retrieved the box which apparently

rsg 9

Kostecke-direct

1
2 had fallen into the trunk and had taken the four
3 people, four defendants along with the box up to the
4 Michigan State office which was located on the mezzanine
5 in the south terminal building.
6

7 Myself and the detective then took the luggage
8 and moved that up to the same office.
9

10 Once we got there, agent Johnson in my presence
11 cut open the strings or opened the strings on the box
12 and inside the box I observed clothing and shoes or boots
13 and a package which was a gift-wrapping type of paper.
14

15 I then observed Agent Johnson open this package
16 and inside the package I observed a clear see-through
17 plastic bag containing a white powdery type of substance.
18
19
20
21
22
23
24
25

t2pm

Q And what was done with that?

A Well, Agent Johnson rewrapped the package and placed it in a cabinet in that office. He had a key to it, or maintained a key to it, and that was it.

Q Did there come a time when you later saw that package that evening?

A A few hours later I saw the package at the office, the regional office of the then Bureau of Narcotics and Dangerous Drugs.

Q In Detroit?

A In Detroit.

Q What happened at that time?

A At that time I observed, well, first of all, I initialed, along with Agent Johnson and other agents, the original container of that package. Then I observed Agent Johnson open the package, I believe at that time take a sample of the contents of the package and perform what was called a Marquis reagent type test on the package that gave a purple type of color which indicated to us there was somewhat of an opium derivative contained in that package.

At this time Agent Johnson then took the contents of the package and transferred it to a substitute plastic package. He sealed that package. I, along

1
2 with Agent Johnson and some other agents initials that sub-
3 stitute package. That package was then placed by Agent
4 Johnson in a locked envelope, lock sealed envelope,
5 and then I observed Agent Johnson place it in the office
6 safe.

7 Q I show you what has previously been marked as
8 Government Exhibit 1C for identification and 1A for identi-
9 fication and 1B for identification, and I ask you to look
10 at 1A and 1C and tell me whether you can identify those?

11 A Well, 1A is what was called a lock sealed
12 envelope that Agent Johnson had placed the evidence in.

13 Q And 1C?

14 A 1C is the substitute container that the evidence
15 was placed in by Agent Johnson. My initials are on the
16 package.

17 Q Now, did there come a time in 1973 when
18 this evidence came in to your hands again?

19 A Yes. On January 15 of 1973 the chief chemist in
20 Chicago regional laboratory, Jerry Nelson, delivered this
21 package to me and I took custody of it at that time at
22 Detroit, Michigan.

23 Q And what did you do with it?

24 A At that time I placed it in my personal safe
25

which I am allotted.

Q In your office?

A In my office, to which I have the only combination, until I believe it was the first week in February when I took it out and brought the package down to New York.

Q And what happened then?

A At New York, I secured it at the regional headquarters office safe of Group 72 until February 9th when I returned to Detroit.

Q And took with you the package?

A And took the package back with me. Upon arriving at Detroit, I placed the package again in the same safe that I had it in before, until March 1st, at which time I turned the package over to the custodian of evidence of Region 6, an agent by the name of Mike Moy.

Q What happened after that with this chain of custody?

A On September 5, 1973, the custodian again, Mike Moy, turned the evidence over to me, and I --

Q That was 1B you are referring to, the bag and the contents that were inside, is that correct?

A Yes, 1B, right.

Q And it was in a lock sealed condition?

A Right. Yes, it was.

Q And what happened at that time?

A Turned the evidence over to me, and I took this package to New York City and on September 6, 1973, I turned it over to Agent Don Blanchard at the United States Courthouse that we are in right now, in the office of Assistant Attorney Phillips, who is the chief of the narcotics section, and observed the package being placed inside of Attorney Phillips' safe.

MR. FIELD: No further questions of this witness at this time.

MR. LEVENSON: Your Honor, the defendants have consented to go out of order and I will be first.

CROSS-EXAMINATION

BY MR. LEVENSON:

Q Agent Kostecke, are you testifying now from memory of the events that occurred some three years ago?

A No, I have reviewed my memory.

Q Did you ever discuss this with Agent Johnson?

A Yes.

Q Your testimony. When did you discuss it with him last?

A Since I have been here in New York. When was the last time?

Q Yes.

1
2 A Today.

3 Q Did you discuss it with him over the lunch
4 hour?

5 A I have talked to him about it, yes.

6 Q Did you discuss what he testified to on the
7 witness stand?

8 A Not in whole, just my testimony in general.

9 Q In part. Have you ever discussed this with
10 Mr. Phillips or Mr. Feld?

11 A Mr. Feld I have, yes. Mr. Phillips, you said?

12 Q Yes.

13 A No.

14 Q Mr. Feld?

15 A Yes.

16 Q Was that today also?

17 A Yes.

18 Q And did he show you -- did you make up any
19 reports, by the way, of the events of November 5, 1970,
20 and December 8, 1970?

21 A The only reports I wrote that day was the BND,
22 what we referred to then as a BND-7 evidence report.

23 Q I show you this exhibit, which would be Government
24 Exhibit 3502. Is this what you referred to as the BND-7?

25 A No.

2 Q Did you make up that report, by the way?

3 A No, Agent Johnson apparently wrote it.

4 Q Did you assist in preparing this document?

5 A He asked me what I saw and things of this
6 nature.

7 Q So this document, in effect, is a joint endeavor
8 between you and Agent Johnson, is that correct?

9 A Correct.

10 Q And did you read this document before you testi-
11 fied?

12 A Yes.

13 Q At any time before you testified?

14 A Yes.

15 Q You are attached to the Detroit area?

16 A Detroit regional office, right.

17 Q When did you get to New York for the purpose of
18 this trial?

19 A For this trial? Last week, Thursday.

20 Q And can you recall how often you have communicated
21 with Mr. Feld since last Thursday, how often you have dis-
22 cussed your testimony with him?

23 A I would have to say probably on a daily basis,
24 except for the weekend.

25 Q Would it be a fair statement that the testimony

2 you gave just now with respect to times, dates, places
3 and incidents were not entirely from your memory of the
4 events that took place on those days?

5 A No, I would have to review my report on that.

6 Q What is that?

7 A I reviewed my report for the times.

8 Q As a matter of fact, had you not reviewed your
9 reports, would it be fair to say that your memory of the
10 events would have been quite dim?

11 A No.

12 Q You say you saw Earl Simms get on a plane at
13 8:20, November 5th?

14 A No, about 6:10, I believe.

15 Q I am sorry, 6:10. I am sorry. 6:10 is when
16 you first saw him?

17 A Yes.

18 Q You don't recall what you did the day before,
19 say, November 4th, do you?

20 A Sure.

21 Q From your own memory?

22 A Sure.

23 Q And November 5th?

24 A Yep.
25

1
2 Q Now, you indicated that you had seen Simms on
3 occasions prior to November 5, 1970, is that correct?

4 A Yes.

5 Q On how many occasions?

6 A Possibly a half a dozen.

7 Q Sorry?

8 A Possibly a half a dozen.

9 Q What about Agent Johnson, had he ever seen Simms
10 before this?

11 MR. FELD: Objection.

12 Q If you know.

13 THE COURT: I will allow it.

14 A If I know that he has? Yes.

15 Q About how often?

16 A At least one time that I know for sure, possibly
17 more.

18 Q And what about Harris, have you ever seen Harris
19 before?

20 A Yes, I have.

21 THE COURT: Mr. Blackstone, are you up or down.

22 MR. BLACKSTONE: It depends on the next ques-
23 tion.

24 THE COURT: Well, why don't you sit down and let's
25

2 see what happens.

3 MR. LEVENSON: I will spare Mr. Blackstone
4 the anxiety and go on to something else.

5 Q Now, this case that you saw Mr. Simms carrying
6 when he boarded the plane, that was an ordinary attache
7 case, wasn't it, gray attache case?

8 A As far as I could see, yes.

9 Q You have seen a number of that type, have you
10 not, in the course of the past three years?

11 A I have seen a number of attache cases.

12 Q Gray attache cases?

13 A Quite a few look alike.

14 Q There was nothing unusual about this particular
15 case?

16 A Not that I noticed.

17 Q Now, the box that was placed in the back of the
18 Cadillac, that was a cardboard box, is that correct?

19 A Yes.

20 Q Would you describe about how large it was, using
21 your hands?

22 A (Witness indicates.) By like this, in length.
23 I'd say about this in width, and possibly height like this.

24 Q The cardboard box itself was not gift-wrapped,
25

1
2 was it?

3 A No.

4 Q There was a package inside the cardboard box
5 that was gift-wrapped, is that correct?

6 A Yes. Yes.

7 Q Was there any wrapping at all on the cardboard
8 box?

9 A Not to my recollection, no, none.

10 Q Was there any string on the cardboard box?

11 A Yes.

12 Q This also was an ordinary brown cardboard box,
13 isn't that correct?

14 A No, it was maroon over black.

15 Q Over black. Had you ever seen such a box such
16 as that before?

17 MR. FELD: Objection on the grounds of relevancy.

18 THE COURT: No, I will allow it.

19 A Not that I can recall to be real honest, most
20 of them are brown cardboard boxes that I have seen.

21 Q Now, do you recall if Flight 630 -- I am talking
22 about the flight on November 5th -- did that flight go
23 straight to New York non-stop or did it stop some place?

24 A I don't recall that.
25

Q It is possible that it stopped some place between Detroit and New York?

A From my -- I don't know. I'd have to say from my knowledge of American Airlines it would go directly to LaGuardia Airport.

Q You don't know of your own knowledge?

A No, I don't recall.

Q What about Flight 345 coming into Detroit, was that a non-stop flight from New York?

A I don't recall.

Q So again you have no knowledge as to whether or not that flight from New York stopped at another city?

A Not at this time, no.

MR. LEVENSON: Thank you. I have no further questions.

CROSS-EXAMINATION

MR. BLACKSTONE:

Q Mr. Kosecke, I wish to go over the people you observed were involved in the December 8th seizure, that is the seizure of Government Exhibit 1C for identification, the package that we were describing?

A Yes.

Q There was Karl C. Simms, he was one of those

persons, is that correct?

A Yes.

Q And is Mr. Simms seated anywhere at the defense table? He is not there, is that correct?

A I don't see him, no.

Q And then there is one Eugene Brown, is that correct?

A Yes.

Q And is Mr. Brown, Eugene Brown, at the table?

A I don't see him.

Q When you say you don't see him, is it a fact he is not there, he is not one of the defendants here?

A He is not here.

Q Pardon?

A He is not at the table.

Q Okay. Then there is one Miss Willa Mae Smith, and she of course is not here?

A She is not.

Q And then the last person arrested was one Sylvia Darcevil?

A Yes.

Q And she is not present here?

A Right, no.

Q And these were the people that you observed on December 8?

A Yes.

MR. BLACKSTONE: I have no further questions.

MR. FEITELL: No cross.

MR. MC ALEVY: No questions, your Honor.

CROSS-EXAMINATION

BY MR. SLOTNICK:

Q Agent Kostecke, you were the partner of Special Agent Johnson, is that correct?

A Yes.

Q With regard to this endeavor. During what period of time were you his partner?

A I believe it was January of 1970 till April of 1971.

Q And during that period of time that you were his partner you exchanged important information about the matter you were working on?

A With him as well as with all agents.

Q And Special Agent Johnson was part of this, up until April of '71, Special Agent Johnson was part of the conferences you had and exchanging of information with each other, is that correct?

1 A Yes.

2 Q Now you mentioned the fact that you drew up a
3 BND-7, 6?

4 A 7.

5 Q Does that bear your signature with it?

6 A It has my signature on it, yes.

7 MR. SLOTNICK: Pursuant to Title 18, U.S.
8 Code 3500, your Honor, I would respectfully request we be
9 given that report.

10 MR. FELD: Your Honor, could we go to the side
11 bar?

12 THE COURT: Yes.

13 (At the side bar.)

14 MR. FELD: In the first place, your Honor, I
15 object to this procedure in dealing with 3500 material that
16 does not follow the Court of Appeals procedure.

17 MR. STONE: Can't hear.

18 THE COURT: He says he objects to that procedure
19 which does not follow what the Court of Appeals has told you
20 to do, and he is correct, and don't do it any more.

21 MR. SLOTNICK: I am sorry, your Honor, I thought
22 your Honor wanted it in a memorandum --

23 THE COURT: Don't do it any more. Don't explain.

Follow what the Court of Appeals said, which is not what you just did.

MR. SLOTNICK: I thought the Court of Appeals indicated that defense counsel has an obligation to tell the jury where they are getting the material from.

THE COURT: And you carry on these discussion outside the hearing of the jury or I am going to have this stuff presented to you with flourishes in the presence of the jury and you are not going to like that.

MR. SLOTNICK: I am sorry, your Honor, you are right, I would not like that.

THE COURT: So let's proceed according to the rules, in both directions, as they affect both sides. What's second?

MR. FELD: Second is that we turned over this material.

MR. SLOTNICK: Under what number? I have looked through it.

THE COURT: What is its number?

MR. FELD: It is 35 -- do you have the list?

MR. FEFFER: It is either 3501 or 3502.

THE COURT: Let's find it and have it identified.

MR. SLOTNICK: The other thing, your Honor, is --

MR. STONE: 3503, which was turned over to me,

which refers to this witness' testimony of the seizure in Detroit, is labeled "Allan Morris, et al." One of my applications before you, which was denied, was a motion to dismiss or to bar this prosecution on double jeopardy. I would like to inquire of this witness, outside the jury's presence, concerning what testimony, if any, he offered in the Detroit proceeding which Allan Morris subsequently pleaded guilty to, involving an arrest on December 2, 1970. He was arrested with Earl Sims. The Government's 3502 for identification is Johnson's testimony and Kostecke's testimony in a motion to suppress of Morris' arrest at this very same airport.

Now, they specifically --

THE COURT: You ask him if Morris was arrested at this same airport.

MR. STONE: I think that would hurt me before the jury.

THE COURT: You claim he was?

MR. STONE: Yes, he was.

THE COURT: What is the answer?

MR. FELD: The answer is he was. We haven't adduced any evidence about that in this case. We have limited the testimony. Neither of these witnesses mentioned that.

1 I am not offering that.

2
3 THE COURT: I am not going to let you question
4 him outside the presence of the jury. You get up affidavits
5 about this.

6 MR. STONE: I did make a motion.

7 THE COURT: Did I deny it?

8 MR. STONE: Yes, you did.

9 THE COURT: I don't want to hear it again.

10 MR. SLOTNICK: Your Honor, the Government has
11 the 3500 material. Apparently the BND-7 with Kostecke's
12 signature on it was not given to us.

13 I have a second request. I can do it now. He
14 indicated he made notes which I don't know whether they
15 were preserved.

16 THE COURT: I don't remember his indicating
17 that.

18 MR. SLOTNICK: I believe he said he looked at
19 his notes before he testified.

20 THE COURT: Ask him.

21 MR. SLOTNICK: I will ask it again.

22 THE COURT: Do you say he has no notes?

23 MR. FELD: I don't know of any. I thought we
24 had turned over all the reports we had. If there is some-
25 thing else --

1
2
3 THE COURT: If you find out that they exist,
4 and you want to request them, I think you had better
5 come to the side bar now.

6 But I think in order that the jury will
7 have the full picture, if this has been delivered to you
8 or is being delivered to you, the jury should know that.
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(In open court.)

THE COURT: All right, the upshot of all that is as I understand it that Mr. Slotnick has in his possession the END Form 7 he requested.

MR. SLOTNICK: I don't think that is correct, your Honor.

THE COURT: Either you have it or you should have it.

Q Agent Kostecke, I show you two reports and ask you whether either of those two reports, are the END 7's that you filled out and signed?

A That one is not.

Q That one is not?

A This one is not.

Q Might this document be the END Form 7 that you filled out and signed?

A This one is, yes.

Q Does it bear your signature anyplace?

A Right over here (indicating.)

MR. SLOTNICK: Thank you. That is 3503, your Honor.

MR. FELD: Will counsel state the source of that document now?

THE COURT: The jury just saw him get it off

your card.

MR. FELD: He had it already.

THE COURT: He already had it. All right.
Is that correct?

MR. SLOTNICK: That is correct.

Q Now, Agent Kostacke, you indicated earlier that prior to your taking the stand and testifying you reviewed some of your notes, is that correct?

A Yes, sir.

Q When you say your notes, what do you mean?

A Written reports.

Q Which are the written reports that you are referring to?

A BND 6 by Agent Jackson and BND 7.

Q In other words of the three pages I showed you two of those are what you reviewed, is that correct?

A Yes, sir.

Q Do you have any other notes concerning this matter and this circumstance?

A That is the only report I have.

Q The only report that we have from you concerning this matter and circumstance is BND ---

A The BND 7.

Q That is the BND 7 supplied by the government?

A Yes.

Q The other report was a report drawn up by Agent Johnson?

A Yes.

Q You made no formal report with reference to this matter at that time?

A That is correct.

Q You have not made any since, is that correct?

A In regard to this matter?

Q In regard to the matters surrounding this Detroit business?

A No, I haven't.

MR. SLOTNICK: Thank you.

BY MR. STONE:

Q Agent Kostecke, did you testify in any Detroit Federal Court concerning anything about Government Exhibit --

A 1A?

Q Yes.

A And B and C, yes, I have.

Q You were cross examined by defense counsel in that case, were you not?

A Yes, sir.

Q At the time that you were questioned and cross examined, was the exhibit itself in the physical

presence of the Court?

A I don't recall.

I don't recall that it was.

Q Did Agent Johnson testify in the Detroit proceedings concerning that exhibit?

MR. FELD: Objection.

A No, he didn't.

THE COURT: What is the grounds of the objection?

MR. FELD: He doesn't know whether Agent Johnson testified.

THE COURT: He just said no he didn't. I assume he knows.

Q Were you the only witness, is that correct, in that proceeding?

A No, that is not correct.

Q Will you please tell us who the other witnesses were?

MR. FELD: Objection.

THE COURT: What is the relevance of that?

MR. STONE: Basically to set the foundation which I set at the side bar, your Honor.

THE COURT: No. I told you that be fully advanced in the papers. I did not order an evidentiary hearing on it and we are not going to conduct one here.

1 MR. STONE: If I may approach the bench again,
2 your Honor, I think we are mistaken about what papers
3 I covered. If I could correct myself at the side bar?
4

5 THE COURT: No, I don't want you to correct
6 yourself at the side bar. If this is a motion of the
7 kind you told me about at the side bar, this is not the
8 time to be making it and I am not going to divert the
9 trial at this point for this purpose. You go ahead.

10 MR. STONE: The papers that I referred to did
11 not refer to this incident. This is the first time I
12 have been aware of this incident being offered in this
13 case.

14 THE COURT: Work up the additional papers on
15 it and if necessary I will hear you after the trial but
16 we are not going to go into that at this trial.

17 MR. STONE: I have no further questions.

18 THE COURT: Any redirect examination?

19 MR. FELD: No, your Honor.

20 THE COURT: All right, Mr. KostECKE.

21 (Witness excused.)

22 MR. FEFFER: Prior to calling the next witness
23 we have a few matters to take up with the Court.

24 THE COURT: Do you want to take a recess?

25 MR. FEFFER: It may be a good idea.

1
2 THE COURT: Let us take 10 minutes, ladies
3 and gentleman.

4 (Jury left the courtroom.)

5 MR. FEFFER: Your Honor, the next witness is
6 Joaquin Ramos. Ramos I believe has five previous
7 convictions for narcotics, two were in 1952, two are in
8 1957 and one, of course, was in Toledo in 1972.

9 The government at this time makes application
10 to exclude from cross examination any reference to the
11 convictions in the early 1950's. The two that occurred
12 in 1952 are both over 20 years old and under the
13 Provo case and other cases we felt they are stale and
14 would have absolutely no relevance and he was 21 years old
15 at that time.

16 THE COURT: No, I usually apply this rule
17 about prior convictions equally both ways but based on
18 what I have heard about Mr. Ramos and the kind of attack
19 to be made on his credibility and sentence and his
20 interesting deal, I think I will give the defense a lot
21 of latitude and if you have any instructions about the
22 limits to which such testimony may be used, you may offer
23 them.

24 I do have a tendency to be evenhanded and I don't
25 know what if anything any of the defense wants to put on

1 but if you are going into the 1952 conviction in the
2 face of what I have said have in mind I understand the
3 Court has rather considerable discretion in this and
4 if I am pushed in the direction of having that work both
5 ways, prima facie I would be inclined to do that.
6
7 I don't know if that is a matter of interest to any of you
8 at all but I just give you that gratuitous thought for
9 guidance.

10 What else?

11 MR. FEFFER: Just one other matter. We passed
12 out the rap sheet of Ramos and one page was inadvertently
13 missing. I would hand it out now.

14 MR. STONE: Your Honor, could I make one
15 statement concerning the double-jeopardy claim and
16 certainly preserve it for after the trial if necessary?

17 I made a motion barring this prosecution based
18 on the Toledo situation on information certainly given to
19 me by my client. I was not aware until yesterday that
20 Simms would testify. I was further not aware until
21 this very day there would be testimony concerning the
22 Detroit arrest of Simms on the same day that Morris
23 was arrested.

24 I think that the 3512 material given to me by
25 the government indicates that Agent Kostocke testified

in the proceeding against Morris and on the same basic testimony that he relayed here in Court. Until then I could not prepare any double jeopardy papers. Certainly there is a difference between the double-jeopardy act when there are two federal jurisdictions involved and where one of the jurisdictions is a state court.

THE COURT: But you are claiming former jeopardy attached in the setting of events that you didn't even know about until now.

MR. STONE: That is correct.

THE COURT: The man didn't know until today he was put a second time in jeopardy?

No, I am not going to divert this trial for that, I am sorry.

MR. STONE: The only thing -- I agree myself Morris did not tell me, he did tell me of the Michigan conviction but I had no idea that there would be any evidence concerning this Michigan arrest and conviction until today. I also agree if there is going to be a post trial proceeding --

THE COURT: I didn't say there is going to be. If there is any, it will be post trial.

MR. STONE: I would want Agent Kostacko and Johnson available to me. If the Court wants to -- they are

1
2 in Detroit and if this can be a matter of 10 minutes
3 afterwards, fine.

4 THE COURT: No, we are not going to take 10
5 minutes afterwards. You just have to handle this at
6 some separate time and some separate way. You have to
7 get their affidavit, put on the disputed evidence at some
8 future time, you may do that but we are not going to do
9 that now and I must say I take a dim view of the notion
10 that this man is now again being put in jeopardy on
11 account of some prior thing he never heard of.

12 MR. STONE: He did hear of it but I didn't know
13 they were going to use it in this case.

14 THE COURT: You see what they use and what your
15 jeopardy argument is but you don't inject other things
16 into it to add to the surprises that you are going to base
17 your arguments on. You bring all that up later.

18 Any other things you want to do?

19 MR. PEPPER: No, your Honor.

20 THE COURT: Anything else?

21 MR. LEVENSON: I just wonder about 3503.
22 I wonder if Mr. Pepper would give it to me.

23 MR. PEPPER: That was handed out with respect
24 to the last two witnesses.

25 MR. LEVENSON: May I look at it? I never got it.

THE COURT: Mr. Slotnick, do you have it?

MR. SLOTNICK: I just gave it back.

MR. FELD: Your Honor, we gave copies.

MR. LEVENSON: Obviously you didn't.

THE COURT: Let us take three or four minutes and resume.

(Recess.)

THE COURT: Gentlemen, if I order a recess I would appreciate you getting back at the end of the recess.

Let us get the jury.

(Jury present.)

MR. FEFFER: The government calls Joaquin Ramos, your Honor.

J O A Q U I N R A M O S, called as a witness
on behalf of the government being first duly
sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Ramos, I am going to ask you to keep your voice up loud as possible and perhaps pull the microphone down close to you. Maybe that will help you.

Mr. Ramos, how old are you presently?

A Forty-two.

Q I direct your attention to 1957. At that time

were you arrested for violation of both New York State and Federal Narcotic Laws?

A Yes..

Q Did you receive a sentence of approximately 17 years?

A Yes.

Q Did you also have two previous narcotic convictions in 1952?

A Yes, I did.

Q Directing your attention back again to 1969, were you released from prison at that time?

A Yes.

Q Were you placed on parole?

A Yes, sir.

Q What did you do when you were released from prison?

A I want to work.

Q Who did you go to work for?

A Vulcan Waterproof and Basement Company.

Q How did you secure this job, Mr. Ramos?

A Through a fellow I did time with in jail.

Q Who was that?

A Frank Verville.

Q What did you do at Vulcan?

2 A I was a laborer.

3 Q Approximately the same time, the summer of
4 1969, did you happen to meet with an individual by the
5 name of Marco Delguardo?

6 A Yes, I did.

7 Q Who is Marco Delguardo?

8 A He was a fellow I did time with in Atlanta Penit.

9 Q Did he stop by your house one day?

10 A Yes, he did.

11 Q Did you have a conversation with him?

12 A Yes.

13 Q What did he say to you and what did you say to
14 him?

15 MR. SLOTNICK: I object to this testimony at this
16 point.

17 MR. FEFFER: Mr. Delguardo is named as a
18 co-conspirator in the indictment.

19 THE COURT: You claim that you will eventually
20 make a connection?

21 MR. FEFFER: Yes, your Honor.

22 THE COURT: Well, I will take it subject to
23 that.

24 MR. STONE: Would your Honor give the jury a
25 cautionary instruction as to hearsay?

THE COURT: No. I will give an instruction if and when it is necessary.

Q Did you have a conversation at that time, Mr. Ramos?

A Yes, I did.

Q Again, tell the Court and jury what Delguardo said to you and what you said to him.

A Marco came over my house.

THE COURT: When is this?

MR. PEPPER: The summer of 1969, your Honor.

THE COURT: All right, go ahead.

A He came over my house. He asked me what I was doing and then I told him I was working.

So he asked me what my intentions were, going back into business.

Q What do you mean by business, Mr. Ramos?

A Narcotics business.

Q Go ahead.

A So I told him that I wasn't sure and that I had to feel my way around. So he told me if I was ready to start again into the business, that I should see him.

Q Several weeks later, again sometime during the summer of 1969, toward the fall, did you have occasion to go with Marco Delguardo to a social club?

1
2 A Yes.

3 Q Where is the social club located?

4 A Havermeyer, Chatham and Havermeyer.

5 Q In the Bronx?

6 A That is in the Bronx.

7 Q Who was there when you arrived?

8 A Well, Leo was there.

9 Q Who is Leo?

10 A Leo Guarino.

11 Q How long have you known Leo Guarino, approximately?

12 A Since 1959.

13 Q Do you see Mr. Guarino in the courtroom?

14 A Yes.

15 Q Will you point him out for the Court and jury?

16 A The one with the white hair.

17 Q Grey hair?

18 MR. PEPPER: May the record reflect that the
19 Defendant Guarino was identified.

20 THE COURT: All right.

21 Q Was anyone else there?

22 A Yes.

23 Q Who was there?

24 A Leo introduced me to his partner Johnny Hooks.

25 Q Anybody else?

1
2 A Also introduced me to Beansy.

3 Q Did you at a later time learn the proper name
4 of this individual referred to as Johnny Hooks?

5 A Yes.

6 Q What is that?

7 A John Capra.

8 Q Do you see Mr. Capra in the courtroom today?

9 A Yes.

10 Q Will you point him out, please?

11 A The gentleman with the blue suit over there.

12 MR. FEFFER: May the record reflect the
13 identification of John Capra.

14 THE COURT: All right.
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Q You mentioned someone by the name of Beansy.
You eventually learned his proper name?

A Yes, I did.

Q What is that?

A Stephen Dellacava.

Q Do you see Mr. Dellacava in the courtroom today?

A The gentleman over there with the glasses.

Q Which one, can you be more specific?

A Gray suit with the blue tie and glasses.

MR. FEFFER: May the record reflect, your Honor,
the identification of Dellacava.

THE COURT: All right.

Q Now, did you have a conversation with Leo Guarino
at that time?

A Yes, I did.

Q And can you tell the Court what he said to you
and what you said to him?

MR. SLOTNICK: So I don't have to pop up, your
Honor, I would have a continuing objection I believe with
regard to conversation.

THE COURT: Yes, and the same ruling, and you
may make a motion later on if you think that is well-advised.

MR. STONE: It is for all counsel, your Honor?

THE COURT: True.

Q Go ahead, Mr. Ramos.

A Well, he asked me how everything was, he found me thin, told me I looked skinny and everything, and general conversation how you felt, this and that. Then Marco excused himself, he went to the bathroom.

Q What took place at that point?

A Leo put some money in my pocket.

Q How much money did he place in your pocket?

A Well, at that time I didn't know. I didn't look at it.

Q Did you look at it later?

A Yes, I did.

Q How much was there?

A Five hundred.

Q What denomination?

A A hundred dollar bills.

Q What else happened?

A He gave me his telephone number, told me not to do nothing with this guy Marco, that he would explain to me later on.

Q What do you mean by do nothing with this guy Marco?

1
2 A To do business, narcotics, anything with him.

3 MR. SLOTHICK: Objection. I ask that be
4 stricken, your Honor. That is a conclusion of the witness.
5 I secondly ask that the witness please raise his voice a
6 bit. I am having great difficulty.

7 THE COURT: First, I will strike out the witness'
8 understanding of what it meant "not to do nothing," and
9 secondly, Mr. Ramos, try to talk into that microphone so you
10 can be heard.

11 THE WITNESS: Yes, sir.

12 Q Now, did you have any occasion to return to the
13 club several days later?

14 A Yes, I did.

15 Q And did you speak to Leo Guarino at that time?

16 A Yes.

17 Q At that time did he give you an explanation?

18 A Yes.

19 Q What did he tell you?

20 A He had told me that in the past he had done busi-
21 ness with Marco, that he had gave him narcotics on consign-
22 ment, and he started him off, and then he found himself
23 a different connection, and then he left and never came
24 around no more.
25

jkb-4

Ramos-direct

Q Did you have a further conversation with Mr. Guarino at that time?

A Yes, I did.

Q What did he say to you and what did you say to him?

A He told me, "Johnny," he says, "If you are going to start again," he says, "it's a lot different than it was from the streets." He says, "If you go back into action again," he says, "get yourself a black guy, that's where the moneys at."

And that he will give me the narcotics, kilos, for 17 five.

Q Would that be heroin?

A Pardon?

Q Would that be a kilo of heroin that you are referring to?

A Kilo of heroin.

Q Did he make any reference to customers of his own?

A Yes. He says, "Get yourself one like I had, Jack Brown."

Q Who was Jack Brown?

A Jack Brown was another fellow that I did time with

jkb-5

Ramos-direct

in Atlanta..

Q After this meeting, did you continue to go to the club?

A Yes, I did.

Q Approximately how often during the fall of 1969 did you go to the club?

A Three, four times a week.

Q And this again is the social club, the one in Haverneyer?

A Yes.

Q On these occasions when you went to the club, who was generally there?

A Johnny Hooks, Leo and Beansy, myself.

Q What was the club used for?

A The club was used for discussions of narcotics, general conversations, counting of money.

Q Can you explain that, when you said the counting of money, can you be more specific?

A Well, every time that I went there Beansy would come in with a brown paper bag, he would say, this is the money from Jack Brown.

MR. FEITELL: I object, your Honor, because no date or time has been placed.

2 Q Is this in the fall of 1969?

3 A Yes.

4 THE COURT: All right. I will allow it.

5 Q Go ahead, Mr. Ramos.

6 A And Beansy would bring in a brown paper bag, and
7 he would turn it over to Johnny Hooks, and they in turn
8 would count the money up, and there would be small bills,
9 and several occasions Johnny would ask me to help him
10 count the money. We would stack them up in thousand dollar
11 bills, and they would split the proceeds.

12 Q Who would split the profits?

13 A Leo and Hooks.

14 MR. FEITELL: Object to that and move it be
15 stricken, profits.

16 MR. PEPPER: I am sorry, the money. Withdrawn.

17 Q Who would split the money they were counting?

18 A Leo and Hooks.

19 Q And Dellacava, Beansy?

20 A And Dellacava would be given a certain amount of
21 money.

22 MR. MC ALEVY: Your Honor, I can't hear the
23 witness.

24 THE COURT: Mr. Ramos, talk into the microphone.
25

2 A And Dellacava would be given a certain part
3 of the money.

4 Q Mr. Ramos, did you ever observe anyone playing
5 chess in that social club?

6 A No, sir.

7 Q Have you ever observed Beansy or Dellacava playing
8 chess?

9 A Beansy and Dellacava is the same name.

10 Q I am sorry. Have you ever observed Dellacava
11 playing chess?

12 A No.

13 Q Did you have a key to that social club?

14 A Yes, I did.

15 Q And who else had a key?

16 A Hooks, Leo and Beansy.

17 Q Now, again, in the early fall of 1969, did you
18 have occasion to meet an individual, a friend of yours by
19 the name of Alex Metro?

20 A Yes, I did.

21 Q And where did this meeting take place?

22 A At my house.

23 Q Did you have a conversation with him at that time?

24 A Yes.

25 Q And can you tell the Court and jury what you said

1
2 to Mr. Metro and he say to you?

3 A Well, Alex asked me how I was doing. I told him
4 I was working, and I asked him what he was doing. So he
5 told me he was moving packages, narcotics. And he was having
6 problems with people that he was getting it from, and he
7 asked me what was my intentions, so I told him I didn't
8 know at the time, and he asked me if I had any intentions
9 of going back into the business. So I say, I probably
10 would. So I says I had some people that I knew, that I
11 could get some goods on consignment.

12 So he asked me would I go into partnership with
13 him. So I told him that I wouldn't carry no packages or
14 nothing like that.

15 Q Why was that, Mr. Ramos?

16 A Because I had been arrested several times for
17 possession of narcotics and I didn't want to handle it.

18 Q Okay. Now the following evening, did you have
19 an occasion to return to the social club?

20 A Yes, I did.

21 Q And who was present when you arrived?

22 A Hooks, Leo and Beansy.

23 Q Did you have a conversation at the club?

24 A Yes, I did.
25

2 Q Can you tell the Court and jury what each person
3 said?

4 A Well, I spoke to Leo and I told Leo that this
5 fellow Alex had come over my house and that he made a
6 proposition, we talked it over, that he wanted to be partners
7 and that he would handle the goods himself and I would get
8 it from Leo and Hooks. So Leo in turn told me, "Where
9 you know this guy from?"

10 I says, "I met him in jail." So he says, "Did
11 you check him out thoroughly?"

12 I says, "Well, the guy did time with me, there
13 was never no word, no bad rumors about him."

14 So he told me, he says, "You'd better check him
15 out and I will check him out myself."

16 Q Now, a few days later, this would still be
17 in the fall of 1969, did you have an occasion to meet
18 Guarino at the Robin Hoy Bar in the Bronx?

19 A Yes, I did.

20 Q Did you have a conversation with Guarino at that
21 bar?

22 A Yes.

23 Q What did he tell you and what did you say to
24 him?
25

1
2 A The conversation came up that there was a rumor
3 on Alex Metro that he was a rat, and he told me that,
4 that not to hook up with him yet because they had to check
5 it out, and he told me, he'd check it out. He also told
6 me to check it out where he was hanging out. He was hang-
7 ing out in some bar, Three Coins, that was up in the Bronx,
8 Three Coins Restaurant and Bar.

9 Q Now, did you see Guarino again a couple of days
10 later in the club?

11 A Yes, I did.

12 Q Did you have a conversation with him?

13 A Yes.

14 Q And what did he say to you and what did you say
15 to him?

16 A He told me that he had found out that Alex Metro's
17 uncle was a rat, that the rumor was that he was a rat, it
18 wasn't Alex Metro, the one that I was with or was going to
19 be with.

20 Q Did you then bring Metro to the club?

21 A Yes.

22 Q And did you introduce him to Guarino, Capra and
23 Dellacava?

24 A Yes, I did.
25

1 Q And did you and Metro begin looking for your
2 own customers?
3

4 MR. FEITELL: Objection. It is leading.

5 THE COURT: Yes, I think you have to watch
6 that, Mr. Feffer.

7 Q What did you and Mr. Metro then begin to do?

8 A Well, Leo told me to give him a key.

9 Q A key to the club?

10 A Yes, in other words, he was accepted then, and
11 then we got some customers.

12 Q Can you name the customers that you got?

13 A Yes. It was a fellow named Cucho and another one,
14 Jimmy Rosa, was --

15 THE COURT: Would you repeat that.

16 THE WITNESS: There was two customers, one
17 Cucho and one Jimmy Rosa.

18 Q What quantity of narcotics did you sell these
19 two individuals approximately per week?

20 A Quarter of a kilo.

21 Q Did you have a certain method for picking up and
22 delivering narcotics to these two customers?

23 A Yes.

24 Q And can you tell the Court and jury what that
25 method was?

1
2 A Well, Leo and Hooks told me to make sure that
3 when we talked to our customers to make sure that they pick
4 up their keys, car keys, and make sure to tell them to
5 put their registrations in the compartment, to have a full
6 gas of tank, and to get their own car.

7 Q And to do what with their car?

8 A To get it and bring it to the club, to give it
9 to Beansy. And the purpose of putting the gas, full gas of
10 tank was --

11 MR. SLOTNICK: Objection, your Honor. I don't
12 think this is a conversation. I think this is a conclusion.

13 THE COURT: Is this what one of them said or is
14 this just what you think?

15 THE WITNESS: No, no, this is what they told to
16 me.

17 THE COURT: All right.

18 Q Go ahead, Mr. Ramos.

19 A And --

20 THE COURT: You were saying the purpose of the
21 full tank, is that what you were saying?

22 A Yes, the purpose of the full tank --

23 MR. FEITELL: I object to the reference, "they
24 told me," -- can we fix the identity?
25

THE WITNESS: Leo and Hooks.

THE COURT: He has already given us that conversation.

Q Go ahead.

A It was the purpose, because I asked them what was the purpose of the full gas of tank, was the purpose that when we give the keys to Beansy, that he would drive around several hours before he would go to the stash and pick up the goods.

Q That would be the narcotics you are referring to?

A Yes.

Q What was then supposed to happen, according to this plan?

A We were supposed to pick up the keys, meet at the club, and then Alex turned the keys over to Beansy, Beansy would leave and we would wait at the club, and then Beansy would come back several hours and then give the keys to Alex and then Alex would pick up the car, where Beansy would tell him where the car was parked.

Q Where would the narcotics be?

A In the trunk of the car.

Q And what happened then?

1
2 A Then Alex would go, pick up the car and deliver
3 the car back to the customer.

4 Q Who would you pay the money to?

5 A To Hooks.

6 Q Can you describe the club that you have been
7 referring to?

8 A The club would be on the corner of Chatham and
9 Havermeier.

10 Q In the Bronx?

11 A In the Bronx, and it would have two doors. If
12 nobody was there, you would have to open up the outside
13 door, then open up the second door.

14 Q This would be with the key that you had?

15 A Yes.

16 Q Go ahead.

17 A And you would enter the club and on the side
18 would be a sofa, TV, couch to your right, a bar, a desk
19 in the back, filing cabinet, clock, liquor underneath the
20 bar, and there would be a bathroom to your left, there would
21 be a closet where you would hang clothes.

22 Q Was there anything else in the club?

23 A Yes.

24 Q What was that?

25 A Traps.

2 Q What are traps?

3 A It would be hidden compartments.

4 Q How many traps were there?

5 A Three.

6 Q And can you tell the Court and jury where these
7 traps were located?

8 A One was where the radiator was, which swung out,
9 you swing out the radiator. One would be in the bathroom,
10 underneath the sink, and one would be in the closet, on top
11 of the -- actually that wasn't it -- it was just a piece
12 of the panel comes out.

13 Q What was stored or kept in these traps?

14 A Money and other things.

15 Q Was there any testing equipment?

16 A And testing equipment.

17 MR. SLOTNICK: I am going to object.

18 MR. MC ALEVY: I object to the leading nature
19 of that question. I mean it is too late now.

20 THE COURT: All right. You will have to watch
21 that, Mr. Feffer. Of course you may cross-examine on that.
22 Do be careful about the leading.

23 MR. PEPPER: I am sorry.

24 Q What type of equipment was in the traps?
25

1
2 A Thermometer and mineral oil.

3 THE COURT: What did you say now?

4 THE WITNESS: A thermometer and mineral oil.

5 Q Were you present at the club in early 1970 when
6 there was a conversation relating to this testing equipment?

7 A Yes.

8 Q And who took part in this conversation?

9 A Beansy, Hooks, Leo, myself and Alex.

10 Q Can you tell the Court and jury who said what?

11 A Alex mentioned to Hooks, I says, "If we come by any
12 kind of goods, how do we know if it is bad, good or not?"

13 So Hooks went by the radiator, opened up the
14 trap, and took out a thermometer. He started showing us by
15 the stove. He says, that if you put the mineral oil in
16 the pot and cook it, and put a pinch of the narcotics which
17 would be heroin in the pot, the thermometer, you put it in,
18 and if it was good goods, it would break up to 234, 237.
19 If it broke below that it would be bad or it would be cut
20 goods. And if it shot up, straight up, it would be synthetic
21 goods.

22 Q Were other types of narcotics tested in the club?

23 A Yes. I asked Hooks myself one time, "How do
24 you test the coke?"

25 Q Is that cocaine?

1
2 A Yes.

3 Q Go ahead, Mr. Ramos.

4 A So, he told me to take, he showed me, took a
5 clear glass of water -- clear glass, pour water into it,
6 and then poured some coke into it, and if it was pure it
7 would come up to the top and rise up to the top and it
8 would become oily like, and if it was cut, and it was already
9 cut, the chemicals would dissolve down to the bottom of the
10 glass, and that would show the difference between the cut
11 cocaine and the pure cocaine.

12 Q Mr. Ramos, I want to show you what has been
13 marked as Government Exhibit 2 for identification. I will
14 ask you to look at it and identify it, if you can.

15 A This is the key to the club Havermeyer, Bronx.

16 Q The key to the Havermeyer Club?

17 A Yes.

18 MR. PEPPER: I would offer 2 in evidence.

19 MR. FEITELL: Voir dire.

20 THE COURT: Yes.

21 VOIR DIRE EXAMINATION

22 BY MR. FEITELL:

23 Q Before today, did you ever have an occasion, when
24 you saw this particular key, this key? Do you understand
25

the question?

A No, I don't.

Q The key that you have in your hand.

A Yes?

Q That particular key, and no other key?

A Yes?

Q did
When/you have that particular key in your hand

before today or see it before today, that very key?

A When?

Q Yes, if ever.

A I sent this key to Mr. Feffer.

THE COURT: Well, when did you send it?

THE WITNESS: I don't know, maybe a month or
so, two months ago, I don't remember.

MR. MC ALEVY: Can't hear the answer.

THE COURT: Speak up.

THE WITNESS: I don't recall.

THE COURT: Well, about when?

THE WITNESS: Maybe two months ago or so.

THE COURT: All right, Mr. Feitell.

Q Where were you, where did you send it from?

MR. PEPPER: Objection, your Honor, as to the
location only.

2 THE COURT: You mean the particular location?

3 MR. FEFFER: That is correct, your Honor.

4 THE COURT: All right. Are you asking whether
5 he was in a place of confinement, Mr. Feitell?

6 MR. FEITELL: No.

7 THE COURT: You want to know which place?

8 MR. FEITELL: I will withdraw the question and
9 approach it from a different angle.

10 THE COURT: Okay.

11 Q Before you sent it to Mr. Feffer, had you been
12 regularly carrying it with you?

13 A No, sir.

14 Q It was somewhere else?

15 A Yes.

16 Q Right?

17 A That's right.

18 Q Did you mark the key up in any particular way
19 to identify it as your own key?

20 A No.

21 Q So for some considerable period of time, what-
22 ever key you sent to Mr. Feffer was not in your physical
23 possession, right?

24 A No.

25

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Q It was in your possession?

A It wasn't in my possession.

Q It was not in your possession, right?

A No.

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

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Ramos-direct

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Q Somebody brought the key to you?

A It was sent to Mr. Feffer.

Q When you got it, whatever key you got, somebody had to get it for you?

A My wife sent it to Mr. Feffer.

Q So you didn't send it to Mr. Feffer, right?
Didn't you say your wife sent it, right?

A Yes.

MR. FEITELL: I object.

THE COURT: You want to develop the chain of custody, Mr. Feffer, before I decide whether to receive it?

MR. FEFFER: Fine.

BY MR. FEFFER:

Q Mr. Ramos, I want to show you what has been marked as Government Exhibits 3, 4 and 5 for identification. I ask you to look at each one and to identify each, if you can.

MR. SLOTNICK: I understand, your Honor, these are not in evidence and I object to the witness identifying whatever that is until they become in evidence.

THE COURT: Offer them in evidence.

MR. FEFFER: I offer them in evidence.

MR. SLOTNICK: May I see them?

I object to the offer, your Honor.

1 THE COURT: On what grounds?

2 MR. SLOTNICK: I don't know what they are.

3 THE COURT: All right. Can you identify those
4 pictures, Mr. Ramos?

5 THE WITNESS: Yes.

6 THE COURT: He is not allowed to try to identify
7 them and if he doesn't identify them they can't offer them?
8 Objection overruled.

9 Q Can you identify these pictures, Mr. Ramos?
10 Take Exhibit 3 first.

11 A This is the club on Havermeier and Chatham.

12 Q Is that photograph an accurate representation
13 of the club as you recall it?

14 A Yes.

15 Q I ask you to look at 4.

16 A That is the club.

17 Q The same club?

18 A Same club.

19 Q It is an accurate representation of the club
20 as you remember it?

21 A Yes.

22 Q I ask you to look at 5.

23 A The same.

24 Q Is this an accurate representation of the club as
25

you recall it?

A Yes.

Q I will ask you to take a pen and circle the club as you have identified it on Government Exhibit 3.

A Identify it?

Q Just circle the club.

A (Witness complies.)

MR. FEFFER: The government will offer 3, 4 and 5.

THE COURT: You gentlemen have seen them, any objection?

MR. LEVENSON: My client would like to see them.

THE COURT: Anybody desire a voir dire?

VOIR DIRE EXAMINATION

BY MR. FEITELL:

Q With respect to 3 for identification, do you know when this picture was taken?

A No, I don't.

Q Do you know who took the picture?

A No, I don't.

Q Do you know what date or approximately what time this photograph was taken?

A No, I don't.

Q Would your answer be the same with respect to Exhibit 4?

1 You didn't take this picture either, for identification?

2 A Did I take them?

3 Q Yes, did you take the picture?

4 A No.

5 Q Were you there when the picture was taken?

6 A No.

7 Q Do you know when the picture was taken?

8 A No.

9 Q With respect to 5 for identification, I take it
10 your answers would all be the same, you didn't take the
11 picture, you weren't there when the picture was taken,
12 you don't know when it was taken, right?

13 A I don't know when this was taken, counsellor.

14 MR. FEITELL: I object.

15 THE COURT: Let me see them.

16 (Handed to Court.)

17 THE COURT: Any objection?

18 MR. MC ALEVY: I just want to ask the witness
19 one question.

20 THE COURT: Go ahead.

21 MR. MC ALEVY: I will need the photographs.

22 BY MR. MC ALEVY:

23 Q Mr. Ramos, with respect to 3 for identification,
24 I notice there is some type of lot with dirt piled up.
25

I ask you if that was the way the club looked back in 1970 and 1971, that lot was there with that type of debris there?

A 1969, 1970 when I was there.

Q No question about that?

A Right.

Q So to your knowledge then all three of those photographs exactly depict the scene as it appeared to you back in 1969 and 1970, is that a fact?

A Yes. They were just starting to build the thruway or whatever was there.

Q Keep your voice up.

A They were starting to build the thruway or something there.

Q You don't know when this picture was taken?

A No, I don't.

Q Do you know whether 3 for identification was taken in 1969, 1970, 1971, 1972 and 1973?

MR. PEPPER: Objection.

THE COURT: He said he doesn't know when this was taken.

Q You said they were beginning to build the thruway there, is that right?

A Yes.

2 Q Show me where they were preparing to build
3 the thruway if it is depicted in 3 for identification.

4 A I wouldn't know but this is the club that I
5 went to and attended to and I hung out there.

6 Q I understand but my question to you is does that
7 photograph accurately depict the club and the scene around
8 the club as it was back in 1969 and 1970, including
9 that debris that covers 1/2 of the photograph marked
10 3 for identification?

11 A I couldn't tell you. We used to go there at
12 night, mostly at night and everything.

13 Q Were you ever there in the daytime?

14 A Occasionally maybe.

15 Q Didn't you say you went there three or four
16 times a week?

17 A Yes.

18 Q This was in the summertime also, was it not?

19 A 9 o'clock at night we used to go there.

20 Q You never got there before 9?

21 A Maybe once in a while but generally 9 and after.

22 Q Tell me, sir, were those street lights there that
23 are depicted in 3 for identification? Were they there at
24 the time?

25 A I don't know, I can't tell you.

Q You don't know? So you don't know whether or not this accurately depicts whether or not the street lights were there, is that a fact?

A I couldn't tell you.

Q What was that?

THE COURT: It was a repetitious question. He already answered it.

Q My question then is you said there was some type of construction going on there?

A Yes.

Q Therefore, I take it you are able to observe that construction going on, whether it be daytime or nighttime, were you not?

A Yes.

Q Now, my question to you is is that what the construction looked like back in 1969 or 1970, what you have testified to today?

A All I know is they were working on this street right here with heavy equipment and so forth.

Q You don't know whether or not this is all filled in or there is a building there today, do you?

A I should imagine it is.

Q But in any event, there was never a building there back in 1969 and 1970, was there?

A Right here.

Q This whole front of 3 for identification?

A I don't know what type of building you are talking about, an apartment building.

Q My question to you, sir, does 3 for identification, does that show exactly how that area looked back in 1969 and 1970 to the date that you testified to here today?

A Yes, sir. I told you they were working on construction, yes.

Q That is how it looked then?

A They were working on construction, yes.

Q With respect to 4 for identification were those holes in the top of the roof, of the Havermeyer?

A I didn't look up there, counselor.

Q You just testified that --

THE COURT: Ask him some more questions, don't tell him what he testified.

Q I ask you now, sir, if the black portion of the building as depicted in 4 for identification and the holes in the side of the building depicted in the same photograph were there back in 1969 and 1970.

A That I can't recall, counsel. All I can recall is this is the club right from here, the bottom.

Q The only thing that you can testify to is that?

A That is the Havermeier Club, the social club where we used to hang out, yes.

Q From the ground floor, meaning the sort of cemented type?

A Right from here.

Q That is what is accurately depicted in the picture then, that hasn't changed at all?

A Right.

Q But you don't know about the remainder of the picture?

A I don't know about these holes that you are telling me.

Q I am just showing you the holes.

A You are showing me.

Q You don't know with respect to that part?

A I don't recall seeing them.

Q With respect to 5 for identification, do you see the holes there?

A Yes.

Q Does that picture accurately depict how the club looked back in 1969 and 1970 as you testified to?

A I wasn't that observant to look up there, counsellor.

Q Again, you can only testify as to the bottom

portion, the cement portion?

A Yes.

Q My question to you, Mr. Ramos, is does 5 for identification and 4 for identification accurately depict the entire scene as you recall it or does it just depict the bottom portions where the cement was as you recall it?

A Counsellor, this is the club. This is the apartment above there. I know there is an apartment on top, there is holes there, I can't tell you whether they were there at the time or not.

Q Then you don't know whether or not these photographs actually depict the way it looked back in 1969, isn't that a fact?

A But the club is what I am identifying here, right here.

Q My question to you is do these photographs --

THE COURT: Don't ask him again, Mr. McAlevy.
Do you have anything else on voir dire?

MR. MC ALEVY: No.

THE COURT: Let me see the photographs.

Anybody else want to voir dire on this?

MR. SLOTNICK: About two questions, your Honor.

BY MR. SLOTNICK:

Q Mr. Ramos, when was the first time you saw these

photographs, do you remember?

A No, I don't.

Q Do you remember where you were when you first saw them? Do you remember?

A It might be the BND.

Q Where?

A In 57th Street. I don't know. I don't recall.

Q They would have been shown to you by a narcotics agent, is that correct?

A Possibly.

Q If you remember?

A It is possible.

Q Do you remember?

MR. PEPPER: Objection, he said he doesn't remember.

THE COURT: All right, sustained.

Q Do you know the name of the agent that might have shown you those photographs?

A It might have been Jimmy Nolan.

Q As a matter of fact, isn't it correct that you don't recall the first time that you saw those photographs?

MR. PEPPER: Objection, your Honor.

THE COURT: Sustained.

Q Do you remember what you were told when they first

showed you those photographs?

MR. FEFFER: Objection.

THE COURT: I will allow it.

Q Didn't someone say this is the Havermeier Club.

A They didn't have to say that, I know the club.

Q I am asking the question, Mr. Ramos. Did somebody say that to you, yes or no?

A They could have.

Q They could have?

MR. SLOTNICK: I have no further questions.

MR. BLACKSTONE: I have some questions.

THE COURT: Go ahead.

BY MR. BLACKSTONE:

Q Mr. Ramos, you say you don't recall when you were first shown these photographs.

THE COURT: No, don't ask him some questions that somebody else asked him. Ask some other question.

Q Was it a month ago, three weeks ago? You have no way of estimating?

A It could have been months ago. I can't recall, counsellor.

Q You can't tell us where it was that you were shown them?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q You have difficulty recalling dates in the recent past?

MR. FEFFER: Objection.

THE COURT: This is voir dire, not cross examination.

MR. BLACKSTONE: I have no further questions.

THE COURT: Any other voir dire?

Let me have some too.

EXAMINATION BY THE COURT:

Q Did you mark this Exhibit 3? Is that your marking on there?

A Yes.

THE COURT: You don't have very good equipment, Mr. Feffer. Did Mr. Ramos mark Exhibit 4 in some way?

MR. FEFFER: No, your Honor.

THE COURT: You haven't had him mark Exhibit 5?

MR. FEFFER: No.

BY THE COURT:

Q Do you say that this area that I have trouble making out is what you describe as that club?

A Yes, sir. It goes around the corner.

Q You said you were picking out the club. Can you circle what you know best on Exhibit 4 or what you say you

know best?

A This would be right from here.

Q Including the street level of that building?

A Yes.

Q Exhibit 4?

A Yes.

Q It is your testimony that that shows the club as you knew it when?

A 1969, 1970 and 1971.

Q Do the same thing if you can on Exhibit 5.

A (Witness complies.)

Q On Exhibit 5 there appears to be a street corner depicted. Do you know what streets meet there?

A Chatham and Havermyer.

Q Which is which?

A I don't know which one is Havermyer. It might be down this way, coming down Havermyer.

Q One street has a stop sign. Do you know which one that is?

A I have been coming down Havermyer and this is Chatham.

Q You say you think the street that meets the stop sign is Havermyer?

A Yes. I am not sure.

Q You are not sure?

A No.

THE COURT: They will be received for what they are worth.

(Government Exhibits 3, 4 and 5 for identification received in evidence.)

BY MR. FEFFER:

Q Mr. Ramos, I show you what has been marked as Government Exhibit 6 and 7 for identification. I ask you to identify each if you can.

A This is the trap --

MR. SLOTNICK: I object and ask that that be stricken. He says he is shown a photograph but again it is not in evidence and I suggest that he can't testify to what it is until it is in evidence. It is a photograph.

THE COURT: Then what. He offers it in evidence and you say it has not been identified? No.

MR. SLOTNICK: Then I have a voir dire.

THE COURT: No, he can do this. You go ahead. Say what it is or what you swear that it is.

A This is the hidden compartment, the trap in the basement of the club.

Q One of the three traps you testified to?

1
2 A Yes.

3 Q I ask you to look at 7 and identify 7 if you can.

4 A Yes. This is the one behind the radiator inside
5 the club. This is the hidden compartment inside the club.

6 Q Does 6 and 7 accurately depict the traps as you
7 recall them in the years 1969, 1970 and 1971?

8 A Yes.

9 MR. FEFFER: The government offers 6 and 7.

10 MR. SLOTNICK: I object and ask for a voir dire.

11 THE COURT: Do you plan to show those to the
12 jury before there has been cross examination? I think it
13 might be simpler --

14 MR. FEFFER: It doesn't matter.

15 THE COURT: I will let you combine your voir dire
16 and cross examination and withhold the ruling on
17 them until later. You may reoffer them after cross
18 examination.

19 MR. SLOTNICK: Thank you very much, your Honor.

20 THE COURT: We might as well dispose of the
21 problem of the key. We are approaching the end of the day,
22 unless you cannot or don't want to.

23 MR. FEFFER: We cannot now, your Honor, no.

24 BY MR. FEFFER:

25 Q Mr. Ramos, I will direct your attention to the

early part of 1970. At that time did you and Metro split up?

A Yes, we did.

MR. MC ALEVY: I object to the leading nature of the question.

MR. FEFFER: At this time I did it only because of the intervention of all the testimony.

MR. BLACKSTONE: I don't care about the reasons of Mr. Feffer for leading.

THE COURT: I care about his reasons and I care about your reasons for doing things. Objection overruled.

Q What did you do at that time with respect to Mr. Metro?

A Alex Metro wanted to go into partnership with another fellow.

THE COURT: When are you talking about?

MR. FEFFER: The early part of 1970, your Honor.

A So I had gone back to the club, the Havermeier Club, told Leo and Hooks about it and --

MR. SLOTNICK: Can we have a time and place, your Honor, when these conversations took place.

THE COURT: I was interested in that too. We are told it is early 1970 and if you want to pin it

down more sharply you may develop that in cross examination.

MR. SLOZNICK: Thank you.

Q Go ahead, Mr. Ramos.

A So I got him back to the social club in the Bronx, the Havermeyer Club and spoke to Leo and Hooks about it.

THE COURT: Speak louder, please, Mr. Ramos.

A Yes. I spoke to Leo and Hooks that Alex and I were splitting up, that he wants to go his way and wanted to be partners with another guy.

So Leo told me, he says, whatever money you have split it with him, don't throw him to the dogs. You take one customer and give him one customer.

Q How much money did you split up then?

A About 3500.

Q Which customer did you retain?

A Jimmy Rosa.

Q About this time, also at the beginning of 1970, did you have occasion to meet a Bobby Jermain?

A Yes, I did.

Q Where did you meet Mr. Jermain?

A I met him at the club but before that I met him a few other places in the Bronx.

Q Who introduced you to Jermain, if you recall?

1 A Hooks and Leo.

2 Q Did you have a conversation with Bobby Jermain
3 about the time you split up with Alex Metro?
4

5 A Yes.

6 Q Where did that conversation take place?

7 A I don't recall if it was at the club or was at some
8 other bar or something.

9 He had told me that Alex told him that we were
10 breaking up and --

11 DEFENDANT JERMAIN: You are a lying bastard.

12 A He wanted to enter a partnership with me and told
13 me that he had a few people out in Detroit and that he had
14 spoke to Leo and so forth about it.

15 Q What did you do after this conversation with
16 Bobby Jermain?

17 A Went back and told Leo and Hooks and told him
18 about it and they said it would be all right, being that
19 Bobby was with them anyway.

20 Q Did you and Bobby Jermain have a method of selling
21 narcotics when you started together?

22 A We had -- we didn't have a method like we had before
23 because Bobby was already with Leo and Hooks.

24 Q Did you have any type of method whatsoever to pick
25 up goods as you call them and deliver narcotics to your

customers?

A Well, at that time we had Jimmy Rosa as a customer and Bobby would order up with Hooks and Leo and Bobby would make arrangements with Beansy and Bobby would get the goods, bring it over to his house and then from there we would meet Jimmy Rosa at the Howard Johnson.

Q Which Howard Johnson?

A In the Bronx, Southern Blvd. and Fordham Road.

Q Then what happened?

A We would meet Jimmy Rosa there and Bobby would give him the package, I would take the money. Sometimes it would be underneath the table, sometimes downstairs in the men's room, bathroom.

Q In an exchange of packages you are referring to?

A Yes.

Q How long did you and Bobby Jermain sell narcotics to Jimmy Rosa approximately?

A Maybe five or six months.

Q During the course of that time, I direct your attention to approximately March or April 1970. Did you have a conversation with Guarino and Capra about this customer Rosa?

A Yes.

Q Where did this conversation take place?

2
3 A Havernmeyer Club.

4 Q What did they say to you and what did you say to
5 them?

6 A Leo and Hooks told me that why shouldn't we get
7 another black guy and start dealing bigger packages, because
8 at that time we were moving quarters, quarter of kilos and
9 Bobby was supposed to have made some arrangements with some
10 people from Detroit and so forth and that was the extent.

11 Q Was there any conversation relating to meeting
12 with these people from Detroit?

13 A Yes.

14 Q What was that?

15 A Bobby said he had a few people from Detroit.

16 Q I will direct your attention to again
17 approximately March of 1970, February of 1970.

18 At that time did you and Bobby Jermain meet
19 with some people from Detroit?

20 MR. SLOTNICK: I would again object to the
21 leading of Mr. Ramos. He is asking questions and
22 identifying the answer and I object to this procedure.

23 THE COURT: I would assume the answer is yes but
24 then you must be very careful because that leaves wide open
25 to hwhom the eople allegedly were and so on. I will allow
it.

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rsg 21a

Ramos-direct

185a

Q All right, Mr. Ramos. Shall I repeat the question.

A Yes.

Q Approximately March of 1970 did you and Bobby Jermain meet some people from Detroit in New York City?

A Yes, we did.

Q And who did you meet?

A I met "Cincey" and another guy named Stanley.

Q Do you know the proper name of Cincey?

A Yes.

Q What is that?

A George Harris.

Q Do you see George Harris in this courtroom today?

A The guy with the beard over there.

MR. FEPPER: May the record reflect, your Honor, the identification of the defendant Harris?

THE COURT: Yes.

Q Do you know the full name of this individual that you refer to as Stanley?

A Stanley Marabel.

Q Where did you meet these two individuals, Harris and Marabel?

A Well, I got a call one day and Bobby tells me, "I'll be over the house to see you." So he came over, picked me up, and he brought me to Hugh Grant Circle.

THE COURT: Where?

2 THE WITNESS: Hugh Grant Circle in the Bronx,
3 and he told me, he says, "We're going to meet the old man."

4 He says, "They know me by Frank, and I will
5 introduce you as Gino."

6 And we met them in a corner of Hugh Grant Circle
7 by a bakery shop, picked them up there.

8 Q Was there any conversation between the four
9 of you after you picked them up?

10 A Yes, we were driving around for several blocks
11 around, Macy's and around the Bronx there, and we had told--
12 Bobby told Cincey that from now on that we had to do busi-
13 ness -- he introduced me as his partner, that we had to do
14 business a new way, that the money had to be up front all
15 the time.

16 So Cincey got a little annoyed and told Bobby,
17 he says, "I've been with you a long time. Why all of a
18 sudden now you want the money up front?"

19 So Bobby says, "Well, this is what our people
20 is telling us. We have to have the money up front."

21 So then I told him, I says, "Well, that's what
22 the new thing has gotta be, that you have to give the money
23 up front before you get the narcotics."

24 So he ignored me, he turned around to Bobby and
25 he told Bobby, he says, "Listen, we made millions of dollars

2 between us. Why now you gotta start this?"

3 So I told Cincey, I says, "Look, whatever you
4 did in the past, that was between you and Bobby. I never
5 earned a dime with you."

6 So Cincey got a little annoyed and he wanted
7 to get off the next corner. So then Bobby told him to cool
8 it, and we drove around several blocks, and then he said,
9 "In other words, Cincey, this is the way it's going to be,"
10 and I agreed with him, and I told him to get in touch with
11 us if you want to do it that way."

12 Then we dropped them off on Hugh Grant Circle and
13 we left.

14 THE COURT: Mr. Feffer, since we have kept
15 everybody overtime, even though we are going to have a long
16 weekend, I will ask you to stop at some convenient point
17 and then we will suspend.

18 MR. FEFFER: Perhaps two additional questions,
19 your Honor, and then that would be a proper place.

20 THE COURT: All right.

21 Q How did George Harris communicate with you and
22 Bobby Jermain from Detroit?

23 A Well, when I hooked up with Bobby, Bobby already
24 was doing business with him, and he had several phone
25 numbers, one was an Allerton fish market that he was supposed

1
2 to drop messages any time he wanted to get in touch with
3 Bobby. Then there was another phone which was that he
4 could get intouch with him through a girl, Ida Bracer.

5 Q Who was Ida Bracer?

6 A Bobby's girl.

7 Q And was there any other place that telephone
8 messages could be left in Detroit?

9 A Yes, there was another one, another girl named
10 Libby.

11 Q Libby?

12 A Yes, Libby.

13 MR. PEPPER: This is probably a good place,
14 your Honor, to stop.

15 THE COURT: All right. We have a three-day week-
16 end. Monday is a court holiday. And so let me wish you
17 a relaxing weekend. Let me remind you not to discuss this
18 case during that weekend. Let's all try to get here promptly
19 at 10:00 A.M. on Tuesday at which time we will resume.

20 Good afternoon, ladies and gentlemen.

21 (Jury left the courtroom.)

22 (Witness left the stand.)

23 DEFENDANT JERMAIN: Hey, Johnny, your Godson
24 said hello.

25 (Witness left the courtroom.)

2 THE COURT: Now, Mr. Jermain, and gentlemen, all
3 defendants in this case have a right to take the stand or
4 not. If they don't take the stand, I am going to tell
5 the jury that they should not draw any inferences against
6 them.

7 DEFENDANT JERMAIN: I apologize, your Honor.

8 THE COURT: Apologies are okay and I accept
9 your apology. Now I am instructing every defendant, and
10 I am doing it in the form of an order of the Court, that
11 there is not to be one word spoken that is audible to the
12 jury, quite apart from the fact that a few more observations
13 like that, Mr. Jermain, you may succeed in hanging yourself.
14 That is your problem and your lawyer's problem.

15 But I am issuing an order of the Court, and if
16 I heard one word from any defendant I am prepared to find
17 that as contempt and to punish you accordingly, and the
18 method of punishment would certainly be a minimum if I find
19 a contempt that you will spend the remainder of the trial
20 in the house of detention, and if there is any disruption of
21 the kind Mr. Jermain committed today, I will have to,
22 because it is my job, take stronger measures of kinds that
23 your lawyers will tell you about in order to protect the
24 orderliness of our proceeding.
25

1 jkb -5a

Ramos-direct

190A

2 I have spoken about that a little bit at length
3 for the benefit of all concerned, and I trust I won't
4 have to speak about it again.

5 10:00 A.M. Tuesday.

6 (Adjourned to Tuesday, October 23, 1973,
7 at 10:00 A.M.)
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THE COURT: They don't have to be marked. You may refer to them and let counsel know what page.

MR. BLACKSTONE: Page 186.

Q I show you a copy of the minutes of your direct examination, page 186 at the top line and ask you whether that first question put to you by Mr. Feffer, whether that refreshes your recollection that it was in March of 1970 when you first met Mr. Harris?

A Yes, it is correct.

MR. FEFFER: I think the record is clear that the question as referred to by Mr. Blackstone says approximately March of 1970.

THE COURT: I think it is consistent with what has been said. You mean the approximately?

MR. FEFFER: Yes, your Honor.

THE COURT: It says approximately, Mr. Blackstone.

MR. BLACKSTONE: Yes.

THE COURT: All right.

Q Now, before you actually met with Mr. Harris in March of 1970 Mr. Jermain as I understand your testimony told you he had previous narcotic dealings with Mr. Harris but that if there were to be future dealings they would be on a cash-in-advance basis, is that correct?

Ramos testified -- and we are talking about, I believe, four different tickets spread over a period of 1970, there are none which relate to any pertinent testimony of Mr. Ramos as to activities of George Harris and I think Mr. Feffer joined the issue when he said that Mr. Ramos indicated that Mr. Harris was in at various times or many times -- I don't recall that particular testimony.

I don't deny it, but the fact is that Mr. Ramos testified about four particular incidents involving Mr. Harris, that connect him with the conspiracy.

One occurred in March of 1970 and there was no ticket in March of 1970.

Two occurred in the summer of 1970, one relating to the gift of the car and the other the introduction of Morris to Jermain and Ramos, and the third occurring in November.

Now, the only ticket -- there is no November ticket, no fall ticket there. There is no March ticket there and there is, I believe, one ticket relating to summer and there is no proof at all that this was the date that Harris was supposed to have been in New York for the purpose of introducing Morris to Jermain.

Now, clearly if that ticket is offered the jury is going to infer that that was the date that event occurred and

there is no such testimony that that was the date.

For that reason I think that it would distort or create a false impression that there is proof that Harris was in New York on a particular date when he introduced Jermain and Ramos to Mr. Morris.

THE COURT: I don't know that it would create that impression. I think the government wants to prove that Mr. Harris and other people travelled to and from Detroit with some frequency. There is no showing they did anything wrong, then it seems to me pretty clear arguments can be made to destroy the possible effect of that evidence. But the only question before me is whether it is relevant, without regard to whether it is sufficient to prove anything. I find it is relevant so I will receive it, if that is the only objection.

Now, I also think that I ought to urge counsel, all of whom have expressed a desire that this trial not last longer than it fairly should to protect all interests at stake, I would urge counsel and I do to carefully consider the stipulation proffered by Mr. Feffer. I don't think it will help any defendant to have a stream of airline employees or hotel employees trotting up to the stand to say this is an airline ticket and so on.

Indeed it seems to me that it would magnify the

2 serving drinks or acting as a bartender for customers at
3 Diame's Bar?

4 A No.

5 Q Mr. Ramos, with respect to the bar that I mentioned,
6 the record shop, the construction companies, do you know
7 where the three men, Capra, Guarino and Dellacava, and
8 Jermain, I am sorry, four men, got the money to invest in
9 these enterprises, if you know?

10 A Yes.

11 MR. SLOTNICK: I object to that. It is a fact not
12 in evidence. They put their own money into the business
13 that they had.

14 MR. MC ALEVY: I object to the form of the
15 question.

16 MR. FEITELL: There is no testimony as to when this
17 business was acquired, and that may very well predate the
18 time encompassed by this indictment, and therefore the
19 question is quite misleading.

20 THE COURT: All the objections are overruled.

21 Q Go ahead, Mr. Ramos.

22 A The sources were from narcotics, and they invested
23 it in a legitimate business.

24 MR. SLOTNICK: Object and move to strike as not
25 being responsive to the question.

2 A It might have been '69 or '70, like that.

3 Q Go ahead.

4 MR. MC ALLEVY: Judge, I am going to object to this.
5 I think we should have a more specific time and certainly
6 a place. If he is going to remember this conversation, he
7 certainly should know where it took place and at least
8 in what year.

9 THE COURT: He said '69, '70.

10 MR. MC ALLEVY: He said '69 or '70. That is a
11 two-year span that we are going into.

12 THE COURT: Yes. That goes to what the jury will
13 make of it. It doesn't go to the admissibility of the
14 testimony.

15 And try to say, if you can, who said what.

16 A Well, Leo -- this happened either in the club or
17 a bar or something like that.

18 Q Go ahead, Mr. Ramos, and who said what?

19 A Well, Leo and Hooks, both of them, in other words,
20 they explained it like to keep Stevy away from going
21 anyplace with us because he was moving the packages and
22 they wanted him to keep out of the limelight.

23 Q Mr. Ramos, did you receive money for these
24 brown bags that you handled?

25 A Yes.

2 merchandise?

3 A They never had no complaints about it.

4 Q You received favorable comments?

5 A Yes, all the time. They were getting pure goods,
6 so it wasn't ---

7 MR. SLOTHICK: Your Honor, I object, move to
8 strike the last question.

9 The question is did you receive comments, and
10 then, did you receive favorable comments. This is the type
11 of leading question that we have objected to, and your
12 Honor at times has sustained the objection.

13 THE COURT: Yes. The questions are all different,
14 so precedent in this area isn't easy to establish or to
15 organize. This one is overruled.

16 Q How much were you charging for these brown bags
17 to Alan Morris?

18 A 24 at first and then it jumped up to 28,000.

19 Q For merchandise contained in the brown bags?

20 A Yes.

21 MR. STONE: Your Honor, I object and move that
22 that be stricken.

23 THE COURT: On what ground?

24 MR. STONE: I don't think there is any testimony
25 as to that, the brown bag, as to Morris.

THE COURT: Overruled, Mr. Stone.

Q Now, did Bobby Jermain ever tell you that --

MR. SLOTHICK: Objection to the form of the question.

MR. LEVENSON: I was about to make the same objection, your Honor.

THE COURT: Yes. It sounds as though it is going to be leading, Mr. Feffer.

Q Did you ever have any conversations as to what was contained in these brown bags with Bobby Jermain?

A Sure, it was junk.

Q What is junk?

A Heroin.

Q Did you ever have any conversations with Steven Bellacava as to what was contained in these brown bags?

A YES.

Q What was in that?

A Junk.

Q Did you have any conversation with Leo Guarino as to what was contained in these brown bags?

A Junk.

MR. MC ALEVY: Objection, your Honor. I would like to know what brown bag he is talking about, where that conversation took place.

2 MR. PEPPER: You will have to ask Mr. Levenson.

3 MR. MC ALEVY: I am objecting to the question, your
4 Honor.

5 THE COURT: Yes, overruled.

6 Q Did you ever have a conversation with John Capra
7 as to what was --

8 MR. SLOTNICK: Objection, your Honor. I would
9 like to know when and where this conversation allegedly
10 took place.

11 THE COURT: He said ever.

12 MR. SLOTNICK: I object to the form of the question
13 as being too broad for the purpose of this trial.

14 We are faced with an indictment that concerns a
15 1969 to '72 date.

16 THE COURT: Okay.

17 Q 1969 to 1971, did you ever have a conversation with
18 John Capra as to what was contained in these brown bags?

19 A Yes.

20 Q What did he say?

21 A Same thing, goods, junk, whatever.

22 Q Heroin?

23 A Heroin.

24 Q Ever have a conversation with George Harris as to
25 what was contained in these brown bags?

1 jkb

Nauwens-direct

1031

2 through the morning on that basis.

3 All right.

4 MR. FELD: Government calls James Nauwens.

5 J A M E S N A U W E N S, called as a witness by the
6 Government, having been first duly sworn, was examined
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FELD:

10 Q Mr. Nauwens, how are you employed?

11 A I am a detective with the New York City Police
12 Department.

13 Q How long have you had that position?

14 A Last two and a half years I have been a detective
15 I have been a policeman for almost nine years.

16 Q During the fall of 1970 what was your assign-
17 ment?

18 A Narcotics investigation. I was assigned to
19 the New York Joint Task Force.

20 Q Do you know an individual named George Harris?

21 A Yes, I do.

22 Q Is he present in the courtroom today?

23 A Yes, he is.

24 Q Will you identify him, please?

25 A The gentleman with the light green jacket and the

beard.

MR. FELD: May the record reflect that the witness has correctly identified the defendant George Harris.

THE COURT: All right.

Q Do you know an individual named Alan Morris?

A Yes, I do.

Q Is he present in the court today?

A The gentleman at the end with the brown jacket.

MR. FELD: May the record reflect that the witness has identified the defendant Alan Morris.

Q Do you know an individual named Robert Jermain?

A Yes, I do.

Q Is he present in the courtroom today?

A Yes, he is. The gentleman right here with the blue stiped shirt.

Q And do you know an individual named Stephen Dellacava?

A Yes, I do.

Q And is he present in court?

A Yes, right there with the glasses, the short gentleman with the dark hair.

MR. FELD: May the record reflect that the witness has correctly identified the defendant Robert

Jermain and Stephen Dellacava.

Q Directing your attention to September 21, 1970, did you have occasion to be at 770 Allerton Avenue in the Bronx?

A Yes, I did.

Q Can you tell us what is located at that address?

A That is a retail fish market.

Q Approximately 7:40 P.M., what if anything did you observe?

A I observed two males, Vincent Belmont and Vincent Esposito come out of the fish market and get into a blue Cadillac which was parked at the curb. As they got into the car, a '69 blue Oldsmobile pulled up next to it, double-parked. That car was driven by Mr. Jermain. He had a brief conversation with the occupants, with Belmont and Esposito, and then he, Jermain, and Mr. Esposito went back into the fish store. They remained there only five minutes, came out, got into their respective vehicles and drove away.

Q Now, directing your attention to November 5, 1970, were you conducting surveillance at LaGuardia Airport, Queens?

A Yes, I was.

Q What did you then do?

A Mr. Jermain drove south on Park Avenue to the vicinity of Madison Square Garden, a few turns, and at that point I lost surveillance. I couldn't see him anymore.

Q Did there come a time when you went to get a camera?

A Yes, I joined other officers and we spoke and at this point I went down to my office, at that time 201 Varick Street, and obtained a camera, proceeded back up to Madison Square Garden, entered the Garden and located Mr. Jermain and Mr. Ramos and Mr. Morris and Mr. Simms and Mr. McSpadden and Mr. Eugene Brown on the Garden floor and took several photographs.

Q Detective Nauwens, let me show you what has previously been marked as Government Exhibit 22 and 24 for identification. Tell us whether you can identify them?

A Yes, sir, these are two photographs that I took on December 7, 1970 in Madison Square Garden.

Q Do they accurately depict the scene which you observed at that time?

A Yes, they do.

MR. FELD: Your Honor, the government offers 22 and 24 for identification in evidence.

(Government Exhibits 22 and 24 marked for identification.)

THE COURT: Are there any objections to those photos, gentlemen?

MR. SLOTNICK: Objection.

MR. LEVENSON: None by Robert Jermain.

MR. SLOTNICK: I object. They don't relate to my client, and I ask on grounds of relevancy, as to my client, they not be entered.

THE COURT: Any other objections?

They will be received.

(Government Exhibits 22 and 24 were received in evidence.)

Q Detective Nauwens, I wonder if you could identify on Government Exhibit 22 where the people are in this photograph whom you have mentioned.

A By initial?

Q By initial.

A Yes.

(Witness complies.)

THE COURT: You might as well say whom you identify by those initials.

A R.J. would be Robert Jermain.

THE COURT: On which exhibit, 22?

MR. FELD: 22.

THE WITNESS. Yes. J.R. would be Joaquin

1 A American Airlines.

2 Q Tell us what, if anything, you observed?

3 A I observed Mr. Harris deplaning from a flight from
4 Detroit. He walked into the main terminal. At that point
5 I returned back toward the deplaning area and I observed
6 Earl Simms also leaving the vicinity of the plane.
7

8 Q The same plane?

9 A Yes.

10 Q After you made that observation what, if anything,
11 did you do?

12 A I attempted surveillance on Mr. Simms with
13 no results, I lost him at the airport.

14 Q What did you then do after that?

15 A I joined up with my brother officers and we
16 travelled down to 42nd Street, in Manhattan, where Mr. Harris
17 entered the Tudor hotel.

18 Q What then happened?

19 A He remained inside a short period of time and
20 then he came out and waited at the curb.

21 After a short interval, Mr. Jermain drove up
22 in a Mustang. Harris entered the vehicle and they drove
23 off.

24 Q Where did they go?

25 A They drove to -- ended up in the vicinity of 42nd

Street and Grand Central Terminal, right near the clock
and standing at the curb was Earl Simms.

Q What, if anything, happened?

A They engaged in conversation.

Q Then what happened?

A Harris exited the car, they had a brief conversation and then Simms and Harris got into the car and Jermain drove off.

Q Did you follow them?

A Yes, we did.

Q Where did they go?

A The car made a U-turn, went down to approximately a block or so, Mr. Jermain got out and entered a public telephone booth and made a telephone call, returning back to the car and then they drove to a restaurant in the Bronx.

Q What was the name of that restaurant?

A Tom's Villabianca Restaurant.

Q Do you know where it is located?

A On Tremont Avenue, East Tremont Avenue, in the Bronx.

Q What happened when the car arrived at the restaurant?

A Harris, Simms and Jermain entered the restaurant.

rsg 5

Jackson-direct

Q Approximately an hour later what, if anything, did you see?

A We observed a green Cadillac Eldorado park and Ramos left the vehicle and walked to and entered the restaurant.

Q How long did he stay, approximately?

A A half hour, 40 minutes.

Q Did he then leave?

A Yes, he did.

Q Did you maintain surveillance at the restaurant?

A Yes, I did.

Q Did there come a time when he returned?

A Yes, approximately 20 minutes later. He returned and entered the restaurant again.

Q Did there come a time when all of them left?

A Yes, four of them.

Q What time elapsed?

A 40 minutes to an hour, I don't know. They all exited and Harris and Jermain entered Jermain's vehicle and Ramos and Simms entered Ramos' vehicle and they drove to a motel in the Bronx.

Q What is the name of that motel?

A Town and Country.

rsg 6

Jackson-direct

2 Q Tell us where that is located?

3 A Right alongside the New England Thruway,
4 along Connors Street.

5 Q Did they all enter the motel?

6 A Yes.

7 Q Approximately an hour later what did you observe?

8 A Mr. Jermain and Ramos exited the motel, returned
9 to their respective vehicles and left.

10 Q Did you maintain surveillance?

11 A Not on the vehicles, on the motel.

12 Q Overnight?

13 A Yes.

14 Q Approximately 12 noon, what, if anything, did you
15 observe on November 6?

16 A Mr. Harris and Mr. Simms got into a cab and were
17 driven to lower Manhattan, around 18th Street where they
18 exited the cab and went into a restaurant.

19 Q Then what did you observe them doing?

20 A They remained inside maybe a half hour or so and
21 on foot started walking north, I believe Broadway, went
22 shopping and at one point went into what looked like an
23 electronic store and made a purchase.

24 After they came out of the store they walked further
25 along and got into a cab and were driven to Grand Central

Q In which they called each other?

A I believe Mrs. Ramos called Mrs. Capra one time. I don't know about vice versa.

Q Did you hear some phone conversations between Mr. Capra and Mr. Ramos?

A Yes.

Q During that period of time. Do you remember what they were?

A What they were?

Q What was said, about when?

A They were somewhat guarded from what I gathered. I gathered only different words and then they wouldn't complete a whole sentence from what I could remember.

Q If I tell you during the course of that wiretap there may have been three conversations between the men would that refresh your recollection as to how many there were?

A Yes, that could be correct.

Q You don't remember the contents of any of those conversations, do you?

A I seem to recall one.

Q Do you recall when that one occurred, about what date?

A I don't know exactly.

2 Something in reference to if he got home okay or
3 all right and I will see you later. Apparently they got
4 home late at night and said they would see each other
5 next day, downtown. To my knowledge that was the conversation.

6 Q You don't remember the date of that though, do you?

7 A No, I don't.

8 Q Basically these three conversations -- you just
9 recounted one -- there were two more basically innocuous
10 telephone conversations?

11 A I wouldn't say innocuous. We didn't understand
12 what they were trying to say in the conversation.

13 Q At the time, during February and March of 1971
14 that you were overhearing these conversations, did you make
15 Mr. Capra a target of any investigation or indicate on any
16 report that you discovered somebody by the name of John
17 Capra dealing in narcotics with Mr. Ramos?

18 A No.

19 Q As a matter of fact, isn't it true during
20 February and March 1971 when you were listening to those
21 conversations, you did not have that feeling?

22 A Do you mean that -- what feeling?

23 Q You didn't think there were any narcotics-related
24 conversations going on?

25 A We didn't know. We had conversations. At the time

1 we couldn't decipher what they were talking about.

2 Q Did you cause a surveillance after your listening
3 to the two other conversations between Mr. Capra and Mr.
4 Ramos, did you surveil Mr. Capra at all?

5 A Just if he happened to cross our path during
6 our surveillance.

7 Q If he just happened to cross your path. Did you
8 look at his house or do anything of that sort?

9 A No, sir.

10 Q But you were busy investigating Mr. Ramos, is
11 that correct?

12 A When I say I didn't look at his house, someone
13 else checked it out where he lived and all.

14 Q During this period of time, February and
15 March of 1971, you had a phone number and checked it out?

16 A We knew where he lived and what car he was driving.

17 Q You checked out the phone number on that and
18 got an address?

19 A Yes.

20 Q But did you have any special surveillance that
21 you can recollect?

22 A On Mr. Capra?

23 Q Yes.

24 A No, sir.

Q Now, did you ever hear Mr. Ramos' voice on tape when he spoke to a Mr. Lopez?

A No.

Q You didn't?

A No.

Q Do you know there was a wiretap in Mr. Lopez's apartment?

A I was informed of that.

Q In 1969?

A Yes.

Q You mentioned it to the Court in obtaining a wiretap for Mr. Ramos' apartment?

A That is correct.

Q As a matter of fact, you excerpted conversations as you testified to before, one conversation between Mr. Ramos and Mr. Lopez, in which Mr. Ramos asked Mr. Lopez for two kilos of heroin.

MR. FELD: Objection.

THE COURT: Let me hear that question.

(Question read.)

THE COURT: Yes, sustained.

Q I show you 3517 and ask you whether this is a true and absolute copy of your affidavit that you signed on

Q In 1970, what was the name of the case? what
it is about ~~was~~ ^{Ida Braser} ~~the~~ ^{pre} ~~presence~~ of the jury.

Q Mr. ~~Belmont~~ ^{Mr. Belmont} ~~is~~ ^{see} on December 8, 1971, an arrest
was that ^a ~~a~~ ^{Others} ~~conviction~~ Mr. Jermain, at that time Mr. Belmont.

Q Mr. ~~Belmont~~ ^{Mr. Belmont} ~~is~~ ^{see} an arrest. Does it say
conviction? ^{Ida Braser, George Harris, Alan Morris.}

MR. ~~STONE~~ ^{MR. STONE}: I object to this line of questioning.
It might have been a conviction.

THE COURT: On what ground?
THE COURT: Was it a conviction?

MR. ~~STONE~~ ^{MR. STONE}: On the grounds that there are other
documents that he is referring to that would not be ad-
missible. ~~S I M M S~~ ^{S I M M S}, called as a witness, being

THE COURT: Overruled.
first duly sworn, was ~~examined~~ ^{examined} and testified as
follows: Now, that investigation carried certain key
names is that correct?
THE COURT: By the court.

Q A Mr. ~~Slottnick~~ ^{Slottnick}, we just had you in here for a
preliminary inquiry, which relates to what prior criminal
record you have if any. You have to tell the truth about
that as ^{OKAY} ~~everything else~~ ^{Now}, do you know to your own knowledge,
whether in 1970, that investigation contained the name of

John Capra, Johnny Capra, Johnny Hooks Capra, my client
over there in the yellow shirt?
any time in your life for any criminal matter and start
with the first one?

MR. SLOTHNICK: No further questions.
I was convicted for manslaughter many years ago.

***..

THE COURT: Let us get him in here and hear what it is about outside the presence of the jury.

MR. LEVENSON: I see on December 8, 1971, an arrest. Was that a conviction?

MR. FELD: It was an arrest. Does it say conviction?

MR. LEVENSON: There is no disposition whatsoever. It might have been a conviction.

THE COURT: Was it a conviction?

MR. FELD: No.

THE COURT: Let us get him in and ask him.
EARL SIMMS, called as a witness, being first duly sworn, was examined and testified as follows:

EXAMINATION BY THE COURT:

Q Mr. Simms, we just had you in here for a preliminary inquiry, which relates to what prior criminal record you have if any. You have to tell the truth about that as everything else, you understand that?

A I do.

Q Tell us what prior convictions you ever had at any time in your life for any criminal matter and start with the first one?

A I was convicted for manslaughter many years ago.

2 be interested in the jewelry.

3 Q So what did you do?

4 MR. SLOWNICK: Your Honor, I would move that
5 all of this be stricken as against the defendant John
6 Capra as having nothing to do with him, being hearsay as
7 to him at this point.

8 THE COURT: Well, it does sound very remote as
9 to him. Do you claim it is going to be connected?

10 MR. FELD: Yes, your Honor. Mr. Ramsey is
11 listed as a co-conspirator.

12 THE COURT: I understand that. But, Mr. Slot-
13 nick, I will have to ask you to make a note of that and
14 renew this if the claim of connection is later not sustained.

15 MR. SLOWNICK: Thank you, your Honor.

16 Q Would you continue.

17 A I left Mr. Brown's house and I went home, and
18 I called Mr. Harris, and I told Mr. Harris about the
19 jewelry, and he said that he would call High Roller and
20 see if he was interested.

21 The following day, Mr. Harris called me back,
22 said he had talked to High Roller and that he was interested
23 in the jewelry, and he gave me a number to call.

24 Q What did you do the next day?

25 A The next day, I went to Mr. Ramsey's store to

another package, is that correct?

A That is correct.

Q So he kept most of this, most of the narcotics or more than half of the narcotics that was secured, is that correct?

A That is correct.

Q All right. Now, didn't all this begin when Mr. Harris told you that he didn't have money for narcotics?

A This is where it began. Mr. Harris collected money from other people, other than myself, to purchase narcotics.

Q In other words, when you understand the point I am trying to make, then you come up with he gets money from other sources, is that correct?

MR. FELD: Objection.

THE COURT: Sustained.

Q Who in that September transaction that we are talking about took the money to New York?

A I don't know.

Q But it is your testimony that it was Mr. Harris who made the purchase, is that correct?

A This is correct.

Q It is your testimony that Mr. Harris took the drugs back, is that correct?

1 Q Do you know a John Capra?

2 A Yes, I do.

3 Q How long have you known John Capra?

4 A About six years.

5 Q Do you see Capra in the courtroom today?

6 A Yes, I do.

7 Q Could you point him out, please?

8 A Yes, sir, the man in the brown suit, third from
9 the end.

10
11 MR. PEPPER: May the record reflect, your Honor,
12 the identification of John Capra.

13 Q And how long have you known Mr. Capra?

14 A About six years.

15 Q Is he a customer at your store?

16 A Yes, he was.

17 Q From the summer of 1969 to the spring of 1973,
18 how much money has John Capra spent in your jewelry shop?

19 MR. SLOTNICK: I object, your Honor. I don't
20 think this is relevant to the proceeding.

21 THE COURT: The question relates to the summer
22 of '69.

23 MR. PEPPER: Summer of '69 to the spring of 1973.

24 THE COURT: You object on the ground it is not
25 relevant?

1
2
3 MR. SLOTHICK: Totally irrelevant to the pro-
ceeding.

4 THE COURT: Overruled.

5 Q Approximately how much money?

6 A I would say about four to \$5000.

7 Q And has he paid in cash?

8 A Yes.

9 Q Do you know Leo Guarino?

10 A Yes, I do.

11 Q Do you see Leo Guarino in the courtroom?

12 A Yes, I do.

13 Q Would you point him out, please?

14 A The fellow in the blue suit.

15 MR. FEFFER: May the record reflect, your Honor,
16 the identification of Leo Guarino.

17 Q How long have you known Guarino?

18 A About as long as I have known John.

19 Q Is he a customer in your store?

20 A Yes, sir.

21 Q Now, from the summer of 1969 to the spring of
22 1973, how much money has Mr. Guarino spent in your store?

23 MR. MC ALEVY: Your Honor, I would like to
24 object to that question, on the grounds that it isn't
25 relevant. Whatever transactions were with this man is

(Witness excused.)

MR. FEFFER: The government calls Charles Mondo.

CHARLES MONDO, a witness called
on behalf of the government, being first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Mondo, how are you employed?

A I am a car salesman.

Q For which company?

A Klett Cadillac, which is now Dreisbach, the name
was changed.

Q Where is Klett Cadillac located?

A Detroit, Michigan.

Q How long have you been associated with Klett
Cadillac?

A Since 1967.

Q Do you know George Harris?

A Yes, sold him a couple of cars.

Q Do you see him in the courtroom?

A Yes.

Q Will you point him out please?

A Over there (indicating.)

MR. FEFFER: May the record reflect that the

witness has correctly identified George Harris.

Q You made reference to the purchase of a couple of cars. Since 1969 in the spring, how many cars did George Harris purchase from you?

A Two cars for himself.

Q And any others?

A Two more than that.

Q What type of car did he purchase?

A Eldorados.

Q The four cars would all be Eldorados?

A Yes.

Q Do you recall how he made payment of those cars?

A In cash.

Q For each car?

A Yes.

Q I direct your attention to 1970, August 6 and 11. Did Mr. Harris purchase two cars on those days or one car on each date?

A Yes, sir.

Q Eldorados.

A Yes.

Q Did he put these two cars in his own name?

MR. LEVENSON: I object to the leading nature of these questions. I think it is unnecessary to ask

whether he put it in his own name. He could ask him whose name he put it in.

THE COURT: All right, ask him in whose name.

Q Do you recall in whose name each of those vehicles were put?

A Put in different names. But I don't recall the names.

Q Were the names other than George Harris?

A Yes.

MR. PEPPER: Will you mark these please.

(Government exhibit 56 and 67 marked for identification.)

Q I am going to show you 56 and 67 for identification and ask you to look at each and to identify them, if you can

A Yes.

Q Will you look at 56 first and identify that first to the Court and jury?

A Those are the cars I delivered in August of 1970.

Q Whose name was it put?

A It is Fred Mignogna.

Q Who purchased that car?

A Mr. Harris.

THE COURT: What is the name?

THE WITNESS: M-i-g-n-o-g-n-a.

Q Who purchased that car?

A Mr. Harris.

THE COURT: What is the name?

THE WITNESS: M-i-g-n-o-g-n-a.

Q Will you look at the next exhibit, please.

Tell us the same information.

A This is Jenny Marie Feerick.

Q That was the name the car was put in?

A Yes.

Q Who purchased that car?

A Mr. Harris.

Q What date was the purchase of that car?

A August 12.

Q Was it the regular course of business for Klett Cadillac to maintain records of the type you just described?

A Yes, sir.

Q Were the entries on each of those documents made in the regular course of business at or about the time the transactions to which they relate?

A I didn't quite follow that.

Q Were the entries on each of those documents made in the regular course of business at or about the time of the transaction to which they refer?

A Yes, within a day or two after the order was written.

Q With respect to one of those cars, did you receive a telephone call from a certain individual in which you discussed the color of the car?

A One of the cars, yes.

Q Do you know where the telephone call came from?

A As far as I recall it came from New York.

Q New York City?

A Yes.

MR. FEFFER: I would offer 66 and 67.

MR. BLACKSTONE: No objection.

MR. LEVENSON: I object on the ground that there is no testimony that this individual is the keeper of these records, the custodian of these records.

THE COURT: Any other objection.

MR. SLOTNICK: As to relevancy, not relevant to my client.

THE COURT: Anything else?

They will be received.

(Government Exhibit 66 and 67 for identification received in evidence.)

MR. FEFFER: May I pass these to the jury?

THE COURT: Is it necessary?

MR. PEPPER: It won't interfere with other examination.

THE COURT: All right.

(Exhibits handed to jury.)

MR. PEPPER: I have no further questions.

THE COURT: All right, cross examination?

CROSS EXAMINATION

BY MR. BLACKSTONE:

Q Did you know that Mr. Harris had a recording studio?

A Yes, sir.

Q He was in the music business?

A Pardon?

Q He was in the music recording business?

A Right.

MR. BLACKSTONE: That is all.

THE COURT: Anything else, gentlemen?

All right, Mr. Mondo, you are excused.

(Witness excused.)

MR. PEPPER: At this time the government would like to pass to the jury man of the exhibits discussed previously.

THE COURT: All right, you may do that.

The ones that were admitted in evidence.

MR. PEPPER: We can go to each one.

reg 12a

1718a :

THE COURT: All right, as you hand them over,
start them through the jury box, why don't you say what
they are.

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UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

Q And did he get back to you that day?

A No, sir.

Q Did you see him on the 28th of October?

A Yes, sir.

Q Approximately when did that occur?

A At about 3:15 P.M. at my office.

Q What happened?

A Mr. Ryan came into the office with Officer Bedal and Detective Beavers of the Police Department. Mr. Ryan then said that Officer Bedal was experienced in the manipulating locks and that he'd take a look at the suitcase.

Q So where did you go?

A We all proceeded down to the baggage room.

Q And who was there?

A Mr. Sibold.

Q What happened at that time?

A Mr. Sibold took the suitcase and took it into a rear area off the baggage room, placed it on a filing cabinet. Officer Bedal attempted to manipulate the locks, and he stated that he would need something smaller. I went back to my office and got two paper clips, and by using the two paper clips and a small screwdriver Officer Bedal was able to unlock the suitcase.

Q You mean he manipulated the locks?

1 A Yes, sir.

2 Q After he manipulated the locks, what happened?

3 A After the suitcase was unlocked, Mr. Sibold
4 took the suitcase and put it on the floor, and then opened
5 the suitcase.
6

7 Q And what did you observe inside?

8 A I observed a number of plastic envelopes filled
9 with powder, one of which was a combination of three
10 alligator-type plastic freezer wraps, and on that package
11 there was a piece of what appears to be masking tape with
12 a "C" inscribed on it.

13 Q Was there anything else inside?

14 A Yes, sir, there were two or three paper towels
15 and a cloth towel.

16 MR. FELD: May we have this marked as Government
17 Exhibit 68?

18 (Government Exhibit 68 was marked for
19 identification.)

20 Q Captain Blevins, let me show you Government
21 Exhibit 68 for identification, and ask you whether you can
22 identify that.

23 A Yes, sir, that is the suitcase.

24 MR. FELD: No further questions.

25 MR. LEVENSON: Defendant Jermains has no

questions, your Honor.

MR. BLACKSTONE: No questions.

MR. FITZEL: No questions.

MR. MC ALVY: No questions.

CROSS-EXAMINATION

BY MR. SLOTNICK:

Q Officer Blevins, it is Agent Ryan that you called in or Detective Ryan, what is his correct title?

A He was at that time a Detective with the Toledo Police Department.

Q And at the time you called him, wasn't he also with the narcotics squad of the Toledo Police Department?

A He was with the vice squad, what is known as the vice squad which also handled narcotics, yes, sir.

Q Wasn't there a special narcotics unit or something set up in Toledo at that time, if you know?

A There was a metropolitan drug unit, yes, sir.

Q Wasn't he one of the officers assigned to the metropolitan drug unit?

A I believe he worked parttime at the drug unit, and parttime with the vice squad at that time.

Q Which also dealt with narcotics?

A Yes, sir.

Q And you happened to call this officer in before

Officer Dehook. They had with them the field test equipment.

Q Did these plastic bags, that you described, did they contain anything that were visible?

A Yes. They contained a white powder.

Q I am going to show you what has been marked as 68 for identification and ask you to look at it and identify it.

A Yes. This is the suitcase that was found on October 28th, 1971 at the Central Union Terminal. I have my initials here, GJR, and the date as scratched in as October 28, 1971.

Under the handle here is the initial RB, which is Robert Beavers, and I was standing there next to Robert when he did initial and scratch this underneath the handle mechanism.

MR. FEFFER: At this point, your Honor, the government would offer 68 for identification, just the suitcase.

MR. SLOTNICK: I would object, your Honor, on the grounds of relevancy. My client is not bound by that bag. As far Capra, I object on the grounds of relevancy.

MR. MC ALEVY: I join in the objection.

MR. FEITELL: I join in the motion.

2 Q Mr. Ryan, I am going to ask you to step over
3 to the table and to start with 68A, and to look at each of
4 the bags, and to tell the Court and jury if you are able
5 to identify what you are observing.

6 A If the Court pleases, this bag was marked with
7 my initials and it is dated GJR, and the date is 10-28-71.

8 Q Will you do the same thing with the remaining
9 bags?

10 A Yes, sir, I can.

11 Now, this one here, your Honor, also marked with
12 my initials, GJR, the date 10-28-71.

13 This one also, my initials, GJR, 10-28-71.

14 Q The next one is D.

15 A 68D, my initials, GJR, 10-28-71.

16 68E, marked also, my initials, GJR, 10-28-71.

17 F, also my initials, GJR, 10-28-71.

18 68G, also marked with my initials, GJR, 10-28-71.

19 68H, also marked with my initials GJR, the date
20 10-26-71.

21 68-I, a bag also marked with my initials, GJR,
22 and the date 10-26-71.

23 68J, also marked with my initials GJR, 10-28-71.

24 68K, marked with my initials, GJR, 10-28-71.

25 ***

1
2 THE COURT: Cross-examination?

3 MR. SLOTHICK: I may have missed it. Which
4 half of the ticket is that? Let me ask the witness.

5 CROSS-EXAMINATION

6 BY MR. SLOTHICK:

7 Q Where did you get that exhibit from?

8 A Mr. Middlebrook.

9 MR. SLOTHICK: I see.

10 THE COURT: Any other cross-examination?

11 MR. MC ALEVY: Yes, your Honor. Oh, I am sorry,
12 Mr. Stone.

13 CROSS-EXAMINATION

14 BY MR. STONE:

15 Q Is Mr. Middlebrook in court today?

16 A Not that I can see, no, sir.

17 Q And you have looked around the courtroom?

18 A I will put these on (putting on eyeglasses.)

19 No, sir, he is not in court.

20 Q This gentleman is not Mr. Middlebrook?

21 A No, sir.

22 MR. STONE: No further questions.

23 CROSS-EXAMINATION

24 BY MR. MC ALEVY:

25 Q What did you say the date of this incident was?

1 a cup of coffee, I don't recall the exact words now.

2
3 At that time, or just prior to this, I had
4 observed Officers Van Dellen and Beavers walking in the
5 concourse behind Mr. Morris. I kept more or less my
6 straight general path. As Van Dellen and Beavers walks
7 by me, where the two parties had met, I turned, flashed my
8 shield, my badge, had my pistol in my right hand, I told
9 them, "Halt, police, you are all under arrest."

10 At that time the two parties were arrested.

11 Q Now, did you subsequently have the opportunity
12 to examine certain property that was found on Alan Morris
13 pursuant to this arrest?

14 A Yes, sir, but I did not search him in the terminal
15 myself at that time.

16 Q Can you describe the property that you found?

17 A Well, while Mr. Morris was being booked, I
18 observed an envelope, a mailing-type envelope, which I
19 retrieved from the booking desk when he was in the process
20 of emptying out his pockets.

21 (Government Exhibits 21A and 21B were marked
22 for identification.)

23 Q Incidentally, was any cash found on the person
24 of Alan Morris?

25 A Yes, sir, there was.

1
2 MR. STONE: Your Honor, in light of the Govern-
3 ment's statement that from here on in the evidence will
4 not be directed against Mr. Morris, and I am further advised
5 by Mr. Slotnick that there will be a defense case of
6 about seven days that will again not affect Mr. Morris at
7 all, would you consider excusing me during portions of that
8 time?

9 THE COURT: No.

10 (In open court.)

11 G E O R G E E A T O N, called as a witness by the
12 Government, having been first duly sworn, was examined
13 and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. PEPPER:

16 Q Mr. Eaton, what is your occupation?

17 A I am a detective in the New York City police
18 department.

19 Q How long have you been with the New York City
20 police department?

21 A A little over ten years.

22 Q I am going to direct your attention to November
23 and December of 1971. Will you tell the Court and jury
24 what your duties were at that time?

25 A I was assigned to the narcotics division special

investigation unit of the New York City police department and I was conducting an investigation into narcotics activity in East Harlem, specifically, narcotics activity related to one Diane's Bar, 2034 Second Avenue.

Q At that time did you know a James Nauvens or a Frank Jackson?

A No, I did not.

Q I am going to direct your attention now to December 8, 1971. Can you tell the Court and jury what you did on that day with respect to the investigation that you just described?

A I made application through the district attorney of New York County, Frank Hogan, for a wiretap order on telephone number 722-9595, which was registered to Armando Donato at 2034 Second Avenue, which was Diane's Bar.

Q When did that wiretap become operative or effective?

A December 9, 1971.

Q Did you personally take part with other officers in monitoring or listening to various conversations over 722-9595 on December 9, 1971, to February 3, 1972?

A Yes, I did.

Q Do you know a John Capra?

A Yes.

1
2 Q Do you see Mr. Capra in the courtroom today?

3 A Yes, I do.

4 Q Can you point him out, please?

5 A He is the third gentleman from the right on
6 the other side of the table.

7 MR. PEPPER: Your Honor, may the record
8 reflect the identification of the defendant Capra.

9 Q Do you know Leo Guarino?

10 A Yes, I do.

11 Q Do you see him in the courtroom today?

12 A Yes, I do.

13 Q Will you point him out, please?

14 A He is seated in the corner of the table with
15 the brown and white striped jacket.

16 MR. PEPPER: May the record reflect, your Honor,
17 the identification of Guarino.

18 Q Do you know a Stephen Dellacava?

19 A Yes, I do.

20 Q Do you see Dellacava in the courtroom today?

21 A Yes, I do.

22 Q Will you point him out, please?

23 A The fifth gentleman from the left.

24 MR. PEPPER: May the record reflect, your
25 Honor, the identification of Stephen Dellacava.

1 jhb-20 Eaton-direct 2167
2 Q Do you know the defendant Jack Brown?

3 A Yes, I do.

4 Q Is Mr. Brown present today in the courtroom?

5 MR. SLOTNICK: Your Honor, I object to the
6 form of the question. There is no defendant Jack Brown.

7 MR. FEFFER: Oh, yes, there is, your Honor.

8 THE COURT: He is a defendant named in the
9 indictment, but not on trial. Is that what you are saying,
10 Mr. Feffer?

11 MR. FEFFER: That is correct, your Honor.

12 A I know him and he is not present.

13 THE COURT: The jury will understand that.

14 MR. FEFFER: Right.

15 End 6
16
17
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25

t7/1
2 Q Have you had occasion in the past to speak
3 with John Capra?

4 A Yes, I have.

5 Q Can you tell the Court and jury when that con-
6 versation took place?

7 A April 14, 1973.

8 Q That would be shortly after his arrest in this
9 case?

10 A Yes, it would have been.

11 Q Where did the conversation take place?

12 A The offices of the Bureau of Narcotics and
13 Dangerous Drugs.

14 MR. SLOTNICK: I object to this line of question-
15 ing. It is a time after Mr. Capra was arrested and he
16 had a right to counsel.

17 THE COURT: What is the purpose of this?

18 MR. PEPPER: The purpose is to show that this
19 officer can identify the voice of Capra, Guarino and
20 Dellacava.

21 THE COURT: Overruled.

22 Q How long did this conversation last?

23 A Between 15 and 30 minutes.

24 Q Have you ever spoken to Leo Guarino?

25 A Yes, I have.

Q Can you tell the Court and jury when this conversation took place?

A February 3rd and 4th of 1972. Again on -- no, that is the only time I spoke to him.

Q How long did this conversation last?

A Between eight and ten hours. The total conversation, between 45 minutes to an hour.

Q Have you ever had a conversation with Stephen Dellacava?

A Yes, I have.

Q When was the first time you spoke to Stephen Dellacava?

A February 3rd and 4th of 1972.

Q How long did that conversation last?

A Between eight and ten hours, with a total conversation of 45 minutes to a little over an hour.

Q Did you have occasion to speak with Dellacava on a subsequent occasion?

A April 14, 1973.

Q Approximately how long did that conversation last?

A Between an hour and two hours.

Q Have you ever had a conversation with the defendant Jack Brown?

2 A Yes, I have.

3 Q When was that?

4 A February 3rd and 4th, 1972.

5 Q For approximately how long did you converse
6 with Brown?

7 A 8 to 10 hours; total conversation, a half hour
8 to 45 minutes.

9 Q Officer, I will direct your attention to
10 January 10, 1972 at 7:25 p.m. Was a conversation
11 intercepted at that time between Stephen Dellacava and
12 Jack Brown over the wiretap at Diane's Bar relating to
13 a proposed chess game?

14 A Yes.

15 Q Can you tell the Court and jury the general
16 substance of this conversation?

17 MR. FEITELL: Objection, your Honor.

18 THE COURT: On what ground?

19 MR. FEITELL: Calling for an operation of
20 the officer's mind. He is now being asked to construe
21 what he heard rather than repeat to the jury what he
22 heard. He should give the conversation on each
23 of its sides to the best of his recollection.

24 THE COURT: Why don't you ask him that,
25 Mr. Peffer?

Q Can you relate to the jury as best you can what was said during the course of that conversation?

A I believe that Jack Brown asked Mr. Dellacava if he would want to play some chess and, during that conversation, Mr. Dellacava asked Mr. Brown if he wanted to bring the big fellow with him.

Mr. Brown replied to that yes, by a hokey sandwich.

Q Do you know how many reels of tape were taken from the wiretap at Diane's Bar?

MR. SLOTNICK: I object.

THE COURT: What is the relevance?

MR. PEPPER: If you lay a foundation.

MR. SLOTNICK: We stipulated that what we have here is whatever was heard on Diane's wiretap.

THE COURT: Is that stipulated?

MR. SLOTNICK: We stipulated that three weeks ago.

THE COURT: That takes care of you, Mr. Pepper.

MR. PEPPER: Fine, your Honor.

THE COURT: Everybody join in the stipulation?

MR. MC ALEVY: Yes.

MR. FEITELL: Will you bear with us a moment, your Honor?

THE COURT: Yes.

(Pause.)

MR. FEITELL: I am ready to stipulate, your Honor. I objected to the demonstration of the boxes on the table which the jury could draw a conclusion from.

THE COURT: I will instruct the jury not to draw any conclusions from boxes on tables. Does that take care of that?

MR. FEITELL: Yes, I think it does.

THE COURT: Now, Mr. Stone, are you joining in the proposed stipulation?

MR. STONE: Yes.

THE COURT: Mr. Mc Alevy?

MR. MC ALEVY: Yes, your Honor.

THE COURT: Mr. Blackstone?

MR. BLACKSTONE: Yes.

MR. LEVENSON: Yes.

THE COURT: All right, now you won't have to go through all the things you were going to embark upon.

MR. FEFFER: Fine.

THE COURT: The stipulation is exactly what?

MR. FEFFER: My understanding is that the government will play 20 conversations and the stipulation goes to the fact these are 20 conversations that were in fact intercepted over the wiretap on Diane's Bar and

these are copies of those 20 conversations.

MR. SLOZNICK: That is exactly the stipulation without conceding the legality of that.

THE COURT: The legality, as you know, Mr. Slotnick you don't have to concede. It is for me to rule upon. There is absolutely no need to add that and the jury will be instructed that I ruled on what is legal and they rule on what are the facts.

I take it that is the stipulation, gentlemen?

MR. SLOZNICK: That is correct, your Honor.

THE COURT: All right.

MR. PEPPER: I will hand to the clerk four boxes containing four reels of tape and ask that they be marked.

(Government Exhibits 71, 72, 73 and 74 were marked for identification.)

MR. PEPPER: Your Honor, I am handing the clerk 75 for identification.

(Government Exhibit 75 was marked for identification.)

MR. PEPPER: Your Honor, Government Exhibit 75 for identification are transcripts of 20 or so conversations that are contained on Government Exhibits 71 through 74 and in the interest of convenience and speed I would like to pass them collectively to the jury in one

group.

THE COURT: I am going to speak briefly to the jury about that before you do it.

MR. PEPPER: Fine.

THE COURT: So they will know the uses and limits of this exhibit.

You just heard Mr. Pepper say, ladies and gentlemen, that these pages that have just been marked Exhibit 75 for identification, purport to be typewritten transcripts showing the name of each speaker in turn or I might say each alleged speaker in turn, of the conversations that the government proposes in a little while to play for you, 20 intercepted conversations, which have been stipulated to have been intercepted on this telephone at this place called Diane's Bar.

Now, I have been advised by counsel on both sides working together that they have been over those pages, which are that transcript, Exhibit 75 for identification. I have been advised by them that they have all listened to these intercepted conversations and to the extent necessary that means they have had the assistance of any clients who allegedly may be overheard who have also had an opportunity to listen.

As a result of that, without conceding the meaning

1
2 or weight or use of this as evidence against any of them to
3 any extent, defense counsel agreed on behalf of their
4 clients and themselves with government counsel that the
5 transcript accurately reproduces, with one exception, the
6 words that you will hear on the playing of this tape with
7 these headsets which have all been given to you.

8 That means in legal terms and practical terms,
9 you will understand that Exhibit 75, the transcript,
10 is in no sense independent evidence. It doesn't purport
11 to have been made during any of these events. It purports
12 to be and everybody agrees, with one exception, a different
13 form of representation or embodiment, a written form of
14 embodiment of words that you will hear aurally through
15 these tapes.

16 I am going to allow you to look at the transcript
17 only for that purpose.

18 Now, the fact remains that the so-called
19 original evidence or more original evidence is the tape
20 and you are the triers of the fact. So remember that
21 whether the lawyers all agree or not, if you were to hear
22 a word differently on the tape, it would be your determination
23 of that which would control.

24 Let me come to what I referred to a couple of
25 times, "with one exception." There is a place in that

1 transcript, and I am advised by defense counsel that it
2 involves some three or so words, where the three or so
3 words have been typed out in that transcript in a certain
4 way by government counsel or government people, and those
5 are the words that the government as a litigant here argues
6 to you can be heard at that point in the taped conver-
7 sation.
8

9 But the defense counsel or some of them, and I am
10 not sure which and you will hear about this, at least some
11 of defense counsel says these words as they have been typed
12 on the transcript are not at all the words that you can
13 hear on the tape but that the words in question, however
14 many there are, actually are some different words.
15

16 Now, in the worder of our standard procedure
17 with the government at this stage going first and then
18 the defendants cross examining and proceeding later, I am
19 going to proceed that way. I will let the government
20 show the transcript with the version it puts forward and
21 claims is correct. I am going to let defense counsel
22 in any suitable way they wish that we can work out during one
23 of these recesses while you are resting, let defense counsel
24 indicate on these transcripts their different, opposing,
25 divergent version and then it is for you to decide.

It may be that while you are listening and having

1 arbr 10

Eaton-direct

2 listened to myself think about this once again out loud,
3 it would be better to have both versions before you at one
4 time while you are listening.

5 Does that make sense to defense counsel?

6 Can we write them in quickly on the transcript?

7 MR. SLOTNICK: I think so, your Honor.

8 THE COURT: Why don't you come up briefly and
9 bring a copy of the transcript.

10 (At the side bar.)

11 THE COURT: Where is the place we are talking
12 about?

13 MR. SLOTNICK: May I place an objection on the
14 record with respect to the transcript?

15 THE COURT: Maybe it would be more comfortable
16 for us if we let them go.

17 (In open court.)

18 THE COURT: Why don't you take five minutes and
19 we will do this quickly.

20 (Jury left the courtroom.)

21 THE COURT: All right, Mr. Slotnick.

22 MR. SLOTNICK: My first objection -- may the witness
23 be excused?

24 THE COURT: Will you step out?
25

(Witness left the courtroom.)

MR. SLOZNICK: My first objection to the use of the transcripts is that what the witness testifies to as to what he heard, that is the best evidence and there is no need to have transcripts, by the use of tapes and transcripts. That is objection No. 1. On that basis I ask that he be allowed to testify and the tapes and transcripts not be used.

THE COURT: All right. Get to objection No. 2, that is overruled.

MR. SLOZNICK: No. 2 is the fact that the transcript as supplied by the government indicates names of individuals who are part of the conversation and I don't think at this stage of the proceeding there is proper voice identification on each and every one so the jury will have this material and can we leave it to themselves to have to determine?

THE COURT: That may be a point, Mr. Feffer.

MR. FEFFER: The alternative is this, to have him listen to the conversation by himself, ask him on the basis of conversations with people that he testified to could he identify the voices and then have him say yes and play the conversation and ask him to say who was speaking at the point and we would then be entitled to put who the

1
2 government feels George Eaton says is speaking in this
3 conversation. That is the reason why I said I was going
4 to pass these out ahead of time.

5 THE COURT: You said you were.

6 MR. FEFFER: I was, but if there is an objection
7 I would certainly do it passing out each individual
8 transcript following the voice identification. If they
9 won't consent to voice identification we should probably
10 do it that way.

11 THE COURT: Do you want to do it that way?

12 MR. SLOTNICK: Yes.

13 MR. FEFFER: We will have to unstaple these.

14 MR. SLOTNICK: With regard to the --

15 THE COURT: Wait a second. For housekeeping
16 purposes I guess you better call it 75-A, B, C and so on.

17 MR. FEFFER: That is correct.

18 What is the next objection?

19 MR. SLOTNICK: Those are my two objections,
20 your Honor.

21 THE COURT: Let us get to the three words.

22 MR. FEFFER: Your Honor, I take it then the
23 procedure will be for Eaton to listen alone to each conver-
24 sation prior to the time it is played for the Court and
25 jury, is that correct, for the purpose of identifying the

1
2 voices?

3 THE COURT: Well, I don't know. If you are
4 absolutely confident that he is going to identify all
5 these voices as they are written down here --

6 MR. PEPPER: I am, your Honor.

7 THE COURT: If he is going to sit there and
8 listen without a copy of the transcript in front of him,
9 I would be willing to risk changing the order and let you
10 put the whole thing in front of the jury and let him
11 identify as we go along.

12 MR. PEPPER: That is what I prefer to do.

13 THE COURT: You said you backed off if anybody
14 objects, you couldn't do it.

15 My question is do you wish to do that and is
16 that a risk that you represent the Court ought to take?

17 MR. PEPPER: Your Honor, I think I can clarify
18 it if I can ask Mr. Eaton at the very beginning whether
19 he listened to each of the conversations that the government
20 intends to offer and ask him if he is able to identify the
21 voices speaking in those conversations.

22 If he says yes I think certainly we would have
23 no objection to passing out all of 75 to the jury at one
24 time. It would save considerable time.

25 THE COURT: You ask him but be sure he knows

1
2 THE COURT: I am with you.

3 MR. SLOTNICK: "The one delivered the other
4 night" is actually "didn't go to, you mean."

5 THE COURT: "Didn't go to, you mean?"

6 MR. SLOTNICK: Right.

7 THE COURT: What I would like you to do, all who
8 have legible handwriting, is to quickly work up 16 copies
9 of this that says above "Delivered the other night," and
10 "Didn't go to you mean."

11 MR. FEEFFER: Your Honor, may I suggest this?
12 I have listened to this particular conversation again and
13 I am of the opinion it is ambiguous at best and probably
14 it would be better to classify it as inaudible if that is
15 all right with defense counsel. It is very hard to pick
16 up and we would be willing to strike out "I delivered the
17 other night" and put in "inaudible" there.

18 THE COURT: Is that agreeable?

19 MR. SLOTNICK: The only problem is in good
20 conscience it is not really inaudible because I have some
21 body who has listened to it.

22 However, may I just question him for one moment
23 to see whether it fringes upon inaudibility?

24 (Pause.)

25 MR. SLOTNICK: Your Honor, my technician indicates

1
2 that it is questionable so therefore I would be satisfied
3 with the inaudibility.

4 THE COURT: At this page R the proposal is to
5 black out very thoroughly the words "Delivered the other
6 night" and just put in inaudible.

7 MR. SLOTNICK: That is correct.

8 THE COURT: Will you agree to it then?

9 And then I guess you better satisfy each other
10 that it is done adequately.

11 MR. FEFFER: We won't get to that conversation
12 for a while.

13 THE COURT: You want to give the jury the whole
14 business.

15 MR. FEFFER: That is correct.

16 MR. SLOTNICK: Your Honor, would that be a
17 wise practice to give the jury the entire transcript?
18 They would be more interested in reading that than what is
19 before them, and listening on the tapes.

20 THE COURT: You think we ought to do it
21 conversation by conversation?

22 MR. SLOTNICK: I think in the pursuit of fairness
23 that would be the best way.

24 THE COURT: Let us do it one by one, A, B, C,
25 D. Give it to them one at a time.

By the time you get through you will work up a very efficient procedure for passing them out.

But in any event, in that light, we don't need to keep the jury waiting, they are not going to get to page R this evening, isn't that correct?

MR. FEFFER: That is correct, your Honor.

THE COURT: Should we have Detective Eaton and the jury back in?

MR. FEFFER: It will take some time to staple them but we can probably proceed.

(Government's Exhibits 75-A was marked for identification.)

THE COURT: That is two pages of January 10, 1972?

MR. FEFFER: That is correct, your Honor.

THE COURT: All right.

If you are ready with 75-A, I assume Mr. Feffer's colleagues can work with 75-B, et cetera, while he is proceeding today.

Let us know as soon as you are ready and we will get the jury.

MR. FEFFER: There is one potential problem that may arise. We intend after each conversation is played to have Detective Eaton interpret on the basis of

2 his prior experience with narcotics enforcement the actual
3 words that are used or the jargon used in this conversation
4 and we have a case for your Honor where this identical
5 procedure was held to be proper by the Court of Appeals,
6 United States versus Borrone-Eglar and several other
7 defendants.

8 MR. FELD: That is 468 Fed. 2d. I don't have
9 the page reference. That is a Second Circuit Case and
10 certiorari was denied.

11 MR. FEITELL: Dealing with the same terminology
12 as we are going to come across now?

13 MR. FEEFFER: The detective was allowed to
14 interpret the argot used in telephone conversations.

15 THE COURT: But does it, Mr. Feitell is asking,
16 what words did he identify. Is that what you are asking?

17 MR. FEITELL: Yes.

18 THE COURT: What words was he allowed to include
19 as the argot that needed definition?

20 MR. FEEFFER: One conversation was supposed to be
21 20 cents coming off. The detective said that means that the
22 speaker was speaking of 20 kilos of narcotics. That
23 would be very similar to what we are doing. 20 cents is
24 a reference to 20 kilos of narcotics in that context.

25 We do the same thing with the words chess game

and other similar terms utilized by several people which we feel relates to narcotics and in fact the surveillance which Detective Eaton will testify to will back this up.

MR. FEITELL: The trouble with that is that is rather nondescriptive words turn out to be words of art so that really involves any question of expertise but something else because we are not dealing with words repeated in other cases. It is really a total concept of a conversation against the background of other facts which gives rise to some inference that the words are not being used according to normal meaning.

THE COURT: If you want to press it I assume Mr. Feffer will have to be allowed to testify to the scope of the overhearing and the extent of his acquaintance with the conversations of these people and so on.

MR. FEITELL: I consent to his going into that so long as the jury doesn't get the impression that the particular words used are known, standing by themselves, throughout drug enforcement to be words of art, which they are not.

THE COURT: I understand what you are saying and it is a subtle problem.

You can have it one of two ways, let it just slide

by, what do you understand by this word "Frankel means heroin."

And then you could just press your objection which I think you have a right to do that he has got to lay a fatter foundation and then it will get built up to whatever it gets built up to and having heard all these tapes I would tell you that I have a feeling that it will come in.

So in a way it is up to you.

You have a right to a certain decent minimum of foundation, you can forego it for technical reasons or you can insist on it. I realize your problem but that is the best I can do on this. I don't know how else to do it.

MR. FEITELL: Much depends on how counsel frames it.

THE COURT: When he frames it in his sloppy way as usual you object and I will rule on it. Are we ready?

MR. PEPPER: Yes, your Honor.

(Witness returns to stand.)

MR. SLOTNICK: Is the witness going to have notes with him on the stand? I notice he has something with him.

THE COURT: What is it?

THE WITNESS: It is questions for the patrolman.

(Jury present.)

THE COURT: Mr. Swanciger says that you are getting a little concerned. I told you we would stop at 6:15 and I am not going to ask you to sit any longer so we will stop at 6:15 which means we will barely get started on this aspect of the evidence.

Nevertheless, let me report to you the results of our conversation while you are out. The area of the couple of words that I talked about has now been changed in its aspect that would be presented to you. There will be an indication of a small space marked "inaudible". That is now counsel have agreed that the few words that their respective people have been in disagreement about really ought to be marked inaudible rather than having two

different versions, so you will come to that at some point and you will realize it is presented to you as inaudible and probably that is the best we can make of it since everybody agrees that is so.

The only other thing I can tell you is instead of giving you these transcripts in one big batch we are going to break it down into 20 smaller batches and give a couple of pages of whatever it is, that it purports to relate to each conversation as that conversation is played to you or presented to you in this other form. All right?

MR. FEFFER: May I pass the jury 75A for identification.

THE COURT: Mr. Swanciger wants me to take care of this bookkeeping. I would think with all that was said on this subject and with the limiting instructions I have given, Mr. Feffer, these exhibits are going to be marked in evidence, not just for identification and the jury can look at them?

MR. FEFFER: Fine, your Honor.

(Government Exhibit 75A received in evidence.)

BY MR. FEFFER:

Q Mr. Eaton, prior to playing this conversation, are you able to identify the voice of Vino Green?

A Yes.

Q Have you heard his voice prior to the time that

these conversations with Vino Green take place?

A No, I have not.

Q You heard his voice subsequent to that?

A Not personally, I have never heard his voice in person.

Q You heard Vino Green speaking on the telephone?

A Yes, I have.

Q Approximately how many times?

A More than five or six times.

Q Are you able to identify the voice of the wife of Jack Brown?

A Yes.

Q Have you heard her speak on the phone before?

A Yes, I have.

MR. FEFFER: May I explain to the jury how the sets work?

THE COURT: Yes.

MR. FEFFER: There is just a small device on the side which you can turn on. Turn them high or low, depending on how you like to listen to them.

If you have any problem or you don't hear anything, I suggest you raise your hand or I will raise my hand as soon as I hear something and if someone signals at that point we can correct it.

I would ask that the first conversation on 71 be played at this time.

(Conversation played.)

Q Officer Eaton, can you identify the individual who says how about playing chess?

A Jack Brown.

Q Can you identify the other party to the conversation?

A Stephen Dellacava.

Q Officer, has it been your experience in narcotics law enforcement -- I will ask you some certain questions with respect to certain of the words utilized in this conversation.

The word chess, how do you interpret this word in the context of that conversation?

A Was just the fact they are going to meet each other that night. They are going to play chess.

Q What does the term big fellow mean to you?

A I believe that was a kilo of narcotics.

MR. FEITEL: I move that this be stricken. Nothing in the officer's expertise indicates why he would ascribe that meaning to that language.

THE COURT: I will at this time strike it out. You may pursue that, Mr. Feffer, and see if there is

any difference later.

MR. PEPPER: Now, your Honor?

THE COURT: Well, the only reason I said later is it is 6:15 and I promised the jury that they would leave at 6:15.

MR. PEPPER: If I may have a minute or two I could complete that conversation.

THE COURT: All right, you may try.

Q Officer, for how long prior to January 10, 1972 were you listening to conversations over Diane's Bar?

A Repeat that time period.

Q How long prior to January 10, 1972 had you been intercepting telephone conversations at Diane's Bar?

A Approximately a month.

Q How many conversations prior to this intercepted conversation between Stephen Dellacava and Jack Brown had you intercepted to the best of your recollection?

A At least three that I remember.

Q After January 10, 1972, for the balance of that month, how many times did you hear Dellacava and Brown speak on the phone?

A I can't recall how many times. It is at least one more after that.

Q Did you ever hear any reference in other conversations between the same individuals to big fellow or small fellow?

A On one other occasion I heard that.

Q What did they refer to in that conversation?

A My little friend and play chess that night, too.

Q Did you hear any other conversation relating to items of food like Hokey sandwich or hors doeuvres?

MR. FEITELL: I object to the leading.

THE COURT: Well, I will allow that.

A Not that I can recall.

Q Did you hear the word hors doeuvres used in other conversations between these two people?

A I don't think so.

Q Now, based on the conversation of February 2, 1972, did you have occasion to put a surveillance on Mr. Dellacava?

MR. FEITELL: I object to this, your Honor.

THE COURT: On what ground?

MR. FEITELL: Because it refers to something that is not in evidence and gives rise to some sinister import to what he heard on a conversation, is so damaging it is just as pronounced as if the conversation were played or heard.

MR. FEFFER: That conversation will be played. I am trying to show how this witness can testify to what he just testified to, Chess games and so forth.

MR. FEITELL: I don't think that this is the time to tax the witness with this particular conversation along this line.

THE COURT: Well, I don't think it is the question of timing is grounds for an objection, but it is not going to get done in a minute.

MR. FEFFER: May I have one more question?

THE COURT: I think so. The objection is overruled.

Q Now, did that surveillance result in a conversation between Dellacava and Jack Brown in reference to a proposed chess game.

MR. FEITELL: I object to this as being entirely leading. And I don't know what surveillance he is talking about.

THE COURT: Sustained.

Q Officer, you just testified to maintaining surveillance on Dellacava after a certain telephone conversation?

A Yes.

Q Was the conversation that preceded the surveillance

1 the one between Dellacava and Jack Brown in which they
2 discussed certain things?
3

4 A Yes.

5 Q What did they discuss?

6 A They discussed --

7 MR. FEITELL: May we have a time and place
8 fixed, Judge?

9 Q Do you know the approximate date of this
10 conversation?

11 A February 2nd, 1972.

12 Q What did they discuss?

13 A They discussed having another chess game.
14 Then this time Dellacava was going to bring his little
15 friend with him.

16 Q Was Brown going to bring anything?

17 A I don't believe Brown was bringing anything
18 along.

19 Q As a result of this conversation, the surveillance
20 took place you described?

21 A Yes.

22 Q What was the result of your surveillance,
23 Mr. Eaton?

24 A Mr. Dellacava --

25 MR. FEITELL: I object to this, your Honor.

THE COURT: On what ground?

MR. FEITELL: Because I don't think that the form of the question -- it is so open-ended, I think the question should be drawn much more narrowly so we don't go afield. The officer is being licensed to give a roaming report about something.

THE COURT: Would you like him to lead a little more?

MR. FEITELL: Yes, on this subject.

MR. LEVENSON: Your Honor, may I have about eight seconds to discuss something with Mr. Feitell?

THE COURT: Yes, you may. In fact, I will give you more time than that. Mr. Feffer, I am going to stop you now. I know you are in the middle of something or other but we did make an agreement with the jury.

Let me just tell you in 30 seconds or so the outline of our schedule for the immediate future. Tomorrow is a holiday and Wednesday we will start at 10:30 a.m. and sit until about 5.

Next week we will omit Monday, we will not sit on Monday, November 12.

I tell you that again so you can make your personal plans. Have a pleasant interlude tomorrow and I will remind you as I do regularly don't discuss the case while you are

away.

(Jury left the courtroom.)

THE COURT: You are excused.

(Witness left the courtroom.)

THE COURT: Gentlemen, wait just a second so we can use three or four minutes.

Mr. Levenson, you wanted to have a consultation about this and where are we? I assume it was my invitation or Mr. Feitell's invitation through me to let Mr. Feffer lead that gave you a problem?

MR. LEVENSON: Even before that I was seriously thinking of approaching Mr. Feitell. I think my client is being harmed by this objection of Mr. Feitell.

I suspect and I may be wrong, but I suspect what Mr. Feffer is getting to is the fact that there was discussion about big fellows and little fellows and some concrete seizure of narcotics or some other evidence which will reinforce what Mr. Eaton wants to say on the stand. I am going to ask Mr. Feitell to withdraw the objection because I don't want that brought out. I would rather do it by cross examination of Mr. Eaton and I was going to discuss this with Mr. Feitell in private.

THE COURT: No, I don't want to intrude, I just want to get you to tell me what the situation was so we could

expedite this thing since you all say you are anxious to get on to some other cases someday. Alternatively, I can suggest we get together about 10:20 or 10:25 on Wednesday and outline where we stand on this. Is that a preferable procedure?

MR. FEITELL: I think I stand in the same place. I just don't think Mr. Levenson knows February 2nd and 3rd they didn't come up with any narcotics but some money.

If that is what he is fearful of.

MR. LEVENSON: No it is not.

THE COURT: That is my recollection.

MR. FEPPER: That is correct.

THE COURT: So does that take care of your caucus, Mr. Levenson?

MR. LEVENSON: No, I particularly don't want that brought out either. I will discuss it with Mr. Feitell privately.

THE COURT: Look, the more I hear of this -- let me put in my two cents too -- the more I am concerned there is no very impressive foundation you were laying. My disposition is as far as you have gotten would be to exclude the interpretation, at least the words big fellow that you are proposing and I am not at all clear at having grabbed somebody with a lot of money on

February 3 is going to change my mind about that because all you have gotten is a reference to a big man and then money. Even if you had heroin I am not sure I would allow you to let this man cause as an etymological expert because he listens in and he judges they are talking about heroin and seizes and arrests the defendants. If the jury wants to draw the inference about that let them but I am not at all clear that adding this kind of expert construction is permissible.

I have heard about things like the girl and boy in the narcotics trade where you have a rather general usage in the streets and that is quite a different thing from this once or twice I heard chopped liver -- which is my way of saying hors d'oeuvres -- and I knew right away they meant heroin. I don't find that, with all deference to the Court of Appeals, I don't think that is what the Court was talking about, that kind of thing, a one-shot use of a cryptic term which this officer figured meant heroin.

If the jury figures that all well and good. If they don't, not so good for you. But that is where I stand at this moment. Again, as you may have observed, I frequently change my mind if I get educated.

t8 pm

jhr 1

2200

MR. PEPPER: Your Honor, my only response will be very brief. The conversation on February 2nd about a proposed chess game, the chess game lasts no more than two minutes, one person says they are going to bring something, hors d'oeuvre, something, another person is going to bring a little fellow, and this whole meet is under surveillance, and as I say, the chess game lasts two minutes, then Dellacava is arrested in possession of \$11,500, I think an interpretation that the hors d'oeuvre represents money in that case can be made, especially on the basis --

THE COURT: If it can be made you may argue it. But it is not a matter of expert knowledge. It doesn't seem to me there is any usage in an area, a trade, a group, of the kind that I would let an expert testify about.

People can have between them certain signals and the officer through his sixth sense may get a judgment about those signals which may or may not lead him to violate the Fourth Amendment. But it doesn't make him an expert on lingo, on language or argot, as it is more eloquently called, because it isn't that. It is just a very private little mode of communication that he figured out had this significance or thought had this significance. I am not going to let him put that before the jury if that

is all you have got.

MR. FEFFER: Your Honor, another example would be when they refer to Christmas presents constantly. This is referred to in numerous conversations throughout this wire-tap. It is my view that if an officer sits there --

THE COURT: You better get your list -- this is what I am driving at -- you better get your list of argot terms, and don't discuss them with brother Eaton between now and Wednesday morning, but tell him to be here at 10:15, and we will all be here, and I will hear this testimony out of the presence of the jury and make a preliminary determination whether it should go to the jury and then I will let you present it if I decide it should be presented or I will keep it out if I think it should be kept out. Can we do that in 15 minutes?

MR. FEFFER: Sure.

THE COURT: Your estimates were a little ambiguous before.

All right. We will get together at 10:15 Wednesday morning for that purpose.

MR. SLOTNICK: Your Honor, one last matter. We have had an overriding rule that 3500 material is delivered the eve and that has been now brought down to the day before. We will not be working tomorrow and some

2 of us will be busy due to the nature of the day.

3 Can we have an instruction with regard to giving
4 out 3500 material today or at least knowing who the witness
5 is going to be?

6 THE COURT: Any problem about that, Mr. Feld,
7 Mr. Feffer?

8 MR. FEFFER: Your Honor, I think that the 3500
9 material we provided will probably carry over. We pro-
10 vided all of George Eaton and three other surveillance
11 officers.

12 It is our best estimation, judging on what has
13 happened today, this will take most of Wednesday. I have
14 talked with counsel and I think they have quite a bit of
15 cross examination for Eaton, for example.

16 THE COURT: I have asked you or directed you,
17 depending on which day I was doing it, to make your
18 estimates in the court's favor. So if you are in doubt
19 resolve the doubt by giving them an extra chapter of 3500
20 material so that we don't have debates about it.

21 MR. FEFFER: Fine, your Honor.

22 THE COURT: I gather you are in doubt, so give
23 them the next chapter.

24 MR. FEFFER: Will do.

25 THE COURT: All right. Wednesday at 10:15.

(Adjourned to November 7, 1973, at 10:15 a.m.)

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

United States of America

vs.

73 Cr. 460

John Capra, et al.

New York, New York.

November 7, 1973 - 10:20 A.M.

(Trial resumed.)

(In open court; jury absent.)

THE COURT: My office has just been called by Miss Blanche, Juror No. 4, who reported she was just leaving 149th Street. She wanted to know whether she should come ahead or put it off till tomorrow.

My secretary told her to come ahead. I assume, but I thought I would check, that everyone thinks we ought to wait. Is that the view?

MR. FEFFER: Yes, your Honor.

MR. FELD: Yes.

THE COURT: Mr. Swanciger says the last time she called from 149th Street it took about an hour for her to get here, which is regrettable, but I take it nobody at this time is of the view that we ought to excuse her and go ahead without her. Is there any such feeling?

MR. FEITELL: No, but I would like to know, Judge, is there any possibility of working on Monday?

1
2 THE COURT: No.

3 MR. FEITELL: Or Saturday?

4 THE COURT: No.

5 MR. SLOTHICK: Your Honor, it was my under-
6 standing, I may be incorrect, that we would have a little
7 hearing this morning anyhow.

8 THE COURT: Well, it was reported to me -- I
9 assumed it had been reported to you -- that the Government
10 had receded from its position that it would try to elicit
11 expert testimony from Detective Eaton about the meanings
12 of words in these conversations.

13 MR. FELD: That is correct, your Honor.

14 THE COURT: My law clerk told that to me. I
15 don't know where she got it from.

16 MR. SLOTHICK: I was not privy to that.

17 THE COURT: Well, I regret that. From now on
18 I think you ought to let your friends in on your plans.

19 MR. FEFFER: Your Honor, I did tell counsel as
20 I was giving out 3500 material. I don't know whether Mr.
21 Slotnick was personally there, but I mentioned that. I
22 don't know whether all six heard it but I did mention it
23 when I was giving out 3500 material.

24 THE COURT: Anyhow that is the position.
25

1 jkb-3
2
3 MR. FEITELL: There is one other request.

4 Is there any possibility that we could start
5 earlier and work later?

6 THE COURT: The Judges of the Court have just
7 lately had a meeting, generated by the fact that our court
8 reporters, who are probably the best in the Federal system,
9 are being destroyed in the process of keeping their high
10 status. I just say this as a fact because I think it is
11 of interest to members of the bar, and not mainly to butter
12 up Mr. Knuppel or other people who may be sitting here.

13 As a result of that meeting, it was concluded
14 that, to the extent humanly possible, we would limit our
15 court days to seven hours overall, including the lunch
16 period, because the reporters, as you know, have a number
17 of duties to perform before and after court sessions,

18 And it will be our disposition to work them,
19 as the expression goes, from 9:30 to 4:30, and not more,
20 unless overwhelming considerations require some other
21 course.

22 And those hours mean that we will include in
23 that incidental matters like the taking of guilty pleas
24 and the imposition of sentences and other things that require
25 court reporters, besides the taking of testimony at trials.

That is a long answer to your short question.
I am not without sympathy for the plight of counsel involved in an extended trial, and my own relatively passive functions on the trial are such that it would be no sweat for me to lengthen these court days. But out of deference to other people, I think I should not, and I normally will not.

MR. FEITELL: Well, could we be starting at 9:30 then instead of 10:00 o'clock, or put in a full court day as per what your Honor just said, instead of breaking at 4:30. For example, today would be a perfect day to go a little later --

THE COURT: I already have told you we would go to 5:00 today. And I am going to stretch the reporters. I indicated it to them and in the meantime I hope they will relax while Miss Blanche is wending her way to the courthouse.

I will have in mind your desire from day to day. It is not easy to go from 9:30 to 4:30, for me as well as the reporters, because there are other things that the Judges have to do on the individual calendar thing that are very hard to do much before 9:30, because it is hard to get people here. But you remind me from time to time, and when we can gain a half hour or alternatively, when you find it feasible, without sacrificing your client's

jkb-5

interests to shorten cross-examination or other things,
let's all do that.

All right. Let me ask you all to stand by
as I will, and as soon as Miss Blanche gets here we will
be ready to go.

Mr. Blackstone?

MR. BLACKSTONE: Yes, the Court inquired as
to our individual counsel's feelings about Miss Blanche,
waiting for Miss Blanche. I would like to let the Court
know that I am prepared to consent to having her discharged
and have the first alternate replace her.

MR. LEVENSON: Your Honor, I would like to join
in that application. I feel that based on the personal
problems that Miss Blanche has had since the beginning
of this trial, and the difficulty that she has had in getting
here on time, that I feel her attention has wavered. I
have noticed her from time to time. She seems to not be
paying full attention, and also in view of the possibility
in the future she will also be having difficulty in
getting down here, I would ask that she be excused and
have the first alternate placed in her stead.

MR. FEITELL: I feel the same way.

MR. MC ALEVY: I have no position on it.

MR. SLOTNICK: I have no position.

1
2 MR. STONE: Mr. Morris has informed me he has
3 no position on it, your Honor. Accordingly I will go along
4 with whatever majority opinion is expressed.

5 MR. FEFFER: Your Honor, I think hat we should
6 wait for Miss Blanche. Last time I think her problem
7 was that she had to go to a bank apparently to get some
8 money out before she left 149th Street. She is coming down
9 and I believe that she will probably be here within half
10 an hour or so, and on that basis that we should keep her
11 on the jury.

12 MR. BLACKSTONE: There are two other points as
13 to going into the merits of our reasoning. I frequently
14 do look at the jury panel, and on more than one occasion it
15 appeared to me at least that Juror No. 4 was either dozing
16 or certainly not paying attention. I think with the
17 background that we have of her, the death of a close relative,
18 of her medical problems, of her lateness, her tardiness,
19 perhaps the Court ought to inquire, inasmuch as Mr. Feffer
20 takes the position that he wants her to remain, to inquire
21 whether she feels that she can continue to be here without
22 having these -- whether she is still prepared to continue
23 or whether she chooses to -- she feels that she cannot
24 concentrate on what is going on. I think that there is
25 some background here to warrant some kind of inquiry.

jkb-7

THE COURT: Well, I won't make that inquiry now. She has indicated -- she did indicate on Friday, I guess Monday is more correct, that she saw no reason why she couldn't continue when she reported her expectation that she would be tardy today.

I have not observed her dozing, Mr. Blackstone, and I now instruct counsel, if you have any, if you make any such observations, not to save them up, but to bring them to my attention at the time of the situation so that I can correct it.

MR. BLACKSTONE: Your Honor, I think I qualified myself. It appeared to me -- I couldn't represent to the Court that she was dozing -- but it was obvious to me that she was not looking at either the witness or the questioner; that she seemed to be staring down into her lap. Now this could mean someone who is paying a great deal of attention. It doesn't necessarily mean because they are not looking that they are not listening. However --

THE COURT: I don't follow that. I think jurors have been allowed traditionally to stare into their laps without being censured or punished. In any event, if you think some juror has not been paying full attention to the proceedings, tell me about it.

I am not happy about Miss Blanche and her per-

1
2 formance, but she has just now been told to get down here,
3 and while we have been chatting, I assume the trains are
4 running.

5 If she is late again, I will re-raise this
6 question, and I will be very sympathetic to the idea of ex-
7 cusing her, but I think we will leave it at that for now.

8 MR. SLOTNICK: Your Honor, may I, for the
9 record, after listening to Mr. Blackstone, this is not the
10 first time that she has been late. She indicated originally
11 on, I think our last session was Monday, that she would be
12 here at no later than 10:30, in fact, probably earlier.

13 In view of the fact that Mr. Feitell --

14 THE COURT: That is not correct.

15 MR. SLOTNICK: That was my understanding.

16 THE COURT: Well, I may have misreported what
17 she said to me. She did not use any words that I should have
18 conveyed to you of that nature.

19 She said she thought and she hoped that she
20 could be here by 10:30, that she had initially asked the
21 clerk to see if we could arrange to have court an hour later
22 in order to leave herself leeway, and it was as a result
23 of my talking to her, and perhaps pressing her to be
24 as speedy as possible, that she said she would make every
25

effort to get here at 10:30.

MR. SLOTNICK: Well, I would, for the record, for your Honor's consideration, more important for the record, ask that we proceed, relieve her, put in whoever is the next alternate and proceed, because actually what we are doing, in pursuit of attempting to save time we are actually wasting time and I fear that if it happens again, we will lose more time, and there has been a strong opinion expressed by all of us that we would like the wheels of justice to move on as speedily as possible and I don't think anybody is attempting to thwart it or be dilatory, and it is now ten to 11:00, and I think we can probably save ourselves some time by calling in the jury, and I would so move that she be replaced by the next alternate. I don't think the defendants nor the Government can possibly be prejudiced by this.

THE COURT: Well, nobody suggests that we are saving time by wasting time waiting for her. It is obvious that it is costing us time or we would not be having this discussion.

The only reason that moves me to refuse to dismiss her now is my belief that we owe a certain duty to jurors as well as other people. She told us her situation. We

1 considered it. I believe I put it to you the other day
2 whether in light of that and her prior tardiness, we should
3 consider excusing her and having done with it, and nobody
4 suggested that we should. She made it clear to me that her
5 schedule was somewhat at the mercy of her physician's sched-
6 ule, she had to get this injection.

7 I do not feel, in light of this background, and
8 our expression to her that we would accommodate the schedule
9 to her situation, including the fact that she did not fail
10 to make clear she could not guarantee the 10:30 business.
11 I feel in light of those circumstances, we must not, in
12 fairness to her, dismiss her from the jury -- I am not sure
13 she would regard that as a trauma or a tragedy for herself.

14 I will leave it where I said I would leave it. If
15 she is late beyond some diminimis time on any later occasion,
16 I will invite you to review this application, and I am
17 likely to grant it.

18 MR. SLOTNICK: Would your Honor inquire about
19 her illness? I think she said she had bronchitis or some-
20 thing of that sort. I think that is what your Honor
21 told us.

22 THE COURT: I don't have to inquire. That is what
23 she said and that is what I reported to you.
24
25

1
2 Are there any other things to take up at this
3 time?

4 MR. STONE: Yes, your Honor.

5 It is my recollection that I moved, on behalf
6 of Mr. Morris, to declare him being in double jeopardy
7 on the basis of the Detroit arrest and conviction.

8 Mr. Morris has asked me to reaffirm that situa-
9 tion here. I believe my reference was first on moving papers
10 and second at a bench conference where Mr. Morris was not
11 present. I believe you directed me at that time to furnish
12 specific affidavits along with copies of the Detroit indict-
13 ments, and in order to assist Mr. Morris in that, it is my
14 request that these specifics be again enumerated on his
15 behalf.
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3 THE COURT: No, I am not going to enumerate these
4 specifics again.

5 I don't keep a photographic record in my head of
6 what is going on in these proceedings. I know you did make
7 a motion, it was denied. You renewed it and it was denied
8 again and I believe there was some talk about the
9 theoretical possibility that this motion could be renewed
10 after trial if Mr. Morris is convicted quite apart from what
11 the Appellate Court may think of the rulings I made thusfar.

12 But your request that I give you a verbatim
13 summary of what has taken place is denied.

14 MR. STONE: Your Honor, I also followed up your
15 suggestion last week and finally got hold of Mr. Mitchell
16 who is here but I haven't had a chance to talk to him.

17 THE COURT: No, but if you stop talking to me you
18 will have a chance to talk to him.

19 Anything else?

20 MR. FIELD: Yes, your Honor. The government proposes
21 to offer three exhibits. They are three registration cards
22 of the Sheraton Beach Hotel in Miami Beach, one for the name
23 of Mr. and Mrs. Peter Martalerro on February 26, 1971 which
24 we marked as Government Exhibit 76 for identification.

25 Another in the name of Mr. and Mrs. R. Frank,
arrival date February 26, which is Exhibit 77 for

identification.

A third in the name of Mr. A. L. Morris, arrival date February 1; and a series of telephone traffic sheets from the hotel showing various long distance calls made by these individuals.

Defense counsel have stipulated -- the telephone traffic sheets are marked 79 for identification. The defense counsel have stipulated the authenticity of these documents and in light of that fact, the government would offer them now.

THE COURT: Any objection? All right, they will be received.

(Government Exhibit 76, 77, 78 and 79 for identification, received in evidence.)

THE COURT: Any other business we should take care of while waiting for Miss Blanche?

All right, let us stand by, gentlemen.

(Recess.)

THE COURT: All right, gentlemen.

G E O R G E E A T O N , resumed.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen.

2 DIRECT EXAMINATION (CONTINUED)

3 BY MR. PEPPER:

4 Q Detective Eaton, I believe you testified to a
5 conversation on Friday that took place between Dellacava
6 and Brown on January 10, 1972 at 7:25 p.m.; is that correct?

7 A That is correct.

8 Q That conversation was played and had reference
9 to a proposed chess game Dellacava was to bring a big
10 fellow and Brown a Moke sandwich.

11 After this conversation was intercepted on this
12 date of January 10, 1972 what, if anything, did you do?

13 A Sometime after that I set up surveillance on
14 Diane's Bar at 2034 Second Avenue and I believe about 9:45
15 p.m., Stephen Dellacava left Diane's Bar, entered his
16 automobile, drove south on Second Avenue, east on 104th to
17 First Avenue, north on First to the Triborough Bridge --
18 I believe it was the Triborough.

19 He ended up going north on the Bruckner
20 Expressway in the Bronx. He got off at Castle Hill Avenue
21 exit and drove still north in the right-hand lane. At
22 Castle Hill he stopped for a red light in the right lane,
23 I was directly behind him.

24 There was another vehicle in the northbound
25 lane, in the left lane -- it is a two-lane service road.

That is, Castle Hill Avenue and Bracker Expressway.

Q This is the Bronx.

A In the Bronx.

When the light changed and traffic started to move, he made a quick left turn in front of the vehicle that had been alongside of him and he aborted my surveillance of him. I couldn't do the same thing.

I lost him in the vicinity of the Havermyer Social Club, about two blocks from the club. I continued to the Beach Row Social Club where I thought he would be going and never saw him again that night.

Q I direct your attention to February 2, 1972 at 9:05 p.m. Was another conversation intercepted between Dellacava and Brown relating to a proposed chess game?

A Yes.

Q Can you relate the substance of this conversation to the Court and jury?

A Jack Brown asked Mr. Dellacava if he wanted to play a little chess the following evening. I believe Mr. Dellacava said he would. Jack Brown asked Mr. Dellacava to bring his little friend. Jack Brown also indicated he would have some hors d'oeuvres and things for Dellacava when he came.

MR. SLOWICK: I renew my objection. If the detective testified to what he overheard on the wiretap, there is no reason to replay it or to play the tape recording.

THE COURT: I don't know why you repeat that but I will allow the government to play it because the government alleges it is a fuller account of what was said and, of course, it will be for the jury to decide whether it is or is not. Your objection is overruled.

MR. FEFFER: We have that particular conversation marked 75B and are passing it to the jury now.

At this time I would ask you to put on your earphones ladies and gentlemen.

(Conversation played.)

t2

Q Detective Eaton, who was the individual that said I might want to play a little game of chess?

A Jack Brown.

Q And the other individual?

A Stephen Dellacava.

Q I direct your attention now to the following evening, that would be February 3, 1972. At 8:40 P.M. was a conversation intercepted between Stephen Dellacava and Leo Guarino?

A Yes.

Q And can you relate again, in substance, what this conversation was about?

A Part of the conversation, Dellacava wanted the phone number and Leo asked him if he wanted Jack's --

MR. SLOTNICK: Your Honor, I am having difficulty hearing the witness.

A Part of the conversation, Dellacava indicated that he wanted Jack's phone number. Leo said Jack, and he said yes. Leo then gave him a phone number.

MR. PEPPER: At this time your Honor we will mark the next conversation as 75C.

(Government Exhibit 75C was marked for identification.)

THE COURT: Well, under the rulings we have

1 already discussed, each of these will be marked in evi-
2 dence with the explanation that I have given to the jury
3 heretofore.
4

5 MR. FEFFER: Fine, your Honor.

xxx 6 (Government Exhibit 75B and 75C, respectively
7 were received in evidence.)

8 (Government Exhibit 75C handed to jury.)

9 MR. FEFFER: I will ask you to put on the head-
10 sets.

11 (Conversation played.)

12 Q Officer Eaton, can you identify the individual
13 who provided the telephone number in the conversation?

14 A Leoluca Guarino.

15 Q And the other individual in the conversation?

16 A Stephen Dellacava.

17 Q I am going to direct your attention to nine
18 minutes later that same evening, 8:49. Was a conversation
19 intercepted at that time between Dellacava and a woman?

20 A Yes.

21 Q And do you know the name of the woman?

22 A I believe it is Mrs. Brown, Jack Brown's wife.

23 MR. FEFFER: At this time, your Honor, we will
24 pass to the jury 75D.

xxx 25 (Government Exhibit 75D was received in evidence.)

(Government Exhibit 75D handed to the jury.)

MR. PEPPER: I will ask you to put on your headsets.

(Conversation played.)

Q Approximately 15 minutes later on that same evening, February 3, 1972, was a conversation intercepted between Dellacava and Leo Guarino?

A Yes.

Q And can you tell the Court and jury the substance of that conversation?

A Stephen Dellacava and Leo Guarino agreed to meet by the statue on 50th Street near Rockefeller Center and Fifth Avenue. A little after 10:00, I think.

MR. PEPPER: At this time we will pass to the jury 75E.

(Government Exhibit 75E was received in evidence.)

(Government Exhibit 75E handed to the jury.)

MR. PEPPER: I will ask you again to put the headsets on.

(Conversation played.)

Q Officer Eaton, who is the individual who will be at the Rainbow Grill?

1 jkb-4 Eaton-direct

2 A Leo Guarino.

3 Q And the other individual in the conversation?

4 A Stephen Dellacava.

5 Q Now, immediately following this telephone con-
6 versation, what if anything did you do?

7 A I had Diane's Bar under observation. A few
8 minutes after the phone call, Stephen Dellacava left the bar
9 and got in his car and he eventually drove north on the
10 Harlem River Drive. He was traveling at a very high rate
11 of speed and that night it was pouring rain. He drove up
12 the Harlem River Drive to the CrossBronx Expressway which
13 he took west.

14 He took the Cross Bronx Expressway to New Jersey,
15 he went over the George Washington Bridge. He took the
16 first exit I believe it is at Fort Lee, made a right turn
17 to run parallel with the bridge, running east back towards
18 the river. He made a right turn under the bridge and he
19 stopped his vehicle. I had to pass him, and I waited up in
20 the next block. I got out of my car. Then after I got out
21 of my car, he passed me to the next intersection, made a
22 right turn. I got back in my car, and made the right turn,
23 and I had lost him, he was gone.

24 Q What did you do following that?

25

1 A We surveyed the area to see if we could pick
2 up the car. It was fruitless. I then started back to
3 180 West End Avenue, which is the residence of Jack Brown.
4 Just before I arrived in the vicinity of Jack Brown, I
5 received a radio transmission, that indicated something to
6 me. I met a detective, Detective Cortazzo, who had been
7 stationed outside Jack Brown's house earlier that evening.
8 He pointed out Dellacava's car which had already arrived
9 there. I observed the car. I then left there and drove
10 to the vicinity of 49th Street and Fifth Avenue.

11 Q Do you know how long Dellacava was at Jack
12 Brown's house?

13 MR. FEITELL: I will object to that, because
14 that assumes a fact not in evidence.

15 THE COURT: Sustained.

16 Q Go ahead, Officer Eaton. What did you do when,
17 I believe you said, you got to Fifth Avenue or 50th Street?

18 A I awaited for the arrival of Stephen Dellacava.

19 Q And what took place?

20 A There were other officers in close proximity to
21 50th Street and Fifth Avenue, near and across the street
22 from the statue.

23 Q Now, did you park your vehicle close to the
24 statue or not?
25

1
2 A No, I did not.

3 Q Was there a reason for that?

4 A Yes.

5 Q And would you tell the Court and jury the
6 reason for not parking your vehicle close to the statue?

7 MR. SLOTNICK: The reason he didn't park his
8 automobile near the statue?

9 MR. PEPPER: Yes.

10 MR. SLOTNICK: I don't think that is relevant
11 to this case.

12 MR. PEPPER: It is very relevant, your Honor.

13 THE COURT: Why don't you come up and tell me.
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(At the side bar.)

MR. PEEFFER: Your Honor, this officer felt that the surveillance was over, Dellacava was going into New Jersey, his particular vehicle had been recognized by Dellacava and to avoid detection he parked his vehicle a block over.

THE COURT: I am not going to allow that.

(In open court.)

Q What took place after you arrived at the location that you mentioned the things had occurred?

A I became aware that other officers had stopped Leo Guarino and Stephen Dellacava.

Q Did you approach?

A I then went about a block north to that scene and I observed Dellacava, Guarino and several officers and Agent MacDonald holding a black toiletry case which had come out of the trunk of Dellacava's car.

Q Did you have occasion to examine the contents of that black case?

A Yes.

Q Can you tell the Court and jury what was in it?

MR. MC ALEVY: I object to this, your Honor.

THE COURT: Yes, on what ground?

MR. MC ALEVY: May I have a side bar, please?

(At the side bar.)

MR. MC ALEVY: I moved this Court before trial as far as suppressing any evidence as a result of this illegal arrest that took place on February 3. The Court denied my motion stating that I had no ground, I had no standing and I let it go at that because it was my opinion that the testimony would reveal that the case was in the trunk of the car.

When I got the 3500 material the other day I noticed that it reflects that that toiletry case had been handed to Guarino and I knew this for the first time and, therefore, I would certainly like to renew my motion to suppress these.

THE COURT: Handed to Guarino by whom?

MR. MC ALEVY: Apparently by Dellacava but that wasn't what we had before us when I made my motion because I recall your Honor saying that you have no standing, Mr. McAlevy.

THE COURT: Because it was represented to me that this was taken out of the trunk of somebody else's car.

MR. MC ALEVY: Absolutely.

THE COURT: It is very late for you to be finding out about this. If you wanted to inquire or get discovery or find out other information about facts that may be the

1
2 basis for a motion to suppress before trial, you had ample
3 time to do so. You can't come here and say now it is made
4 apparent that it was handed, in the passive mode to Guarino
5 and still don't know the basis for any motion.
6

7 What are the facts?

8 MR. PEPPER: The fact is Detective Eaton testified
9 at the suppression and here that the black case came out
10 of the trunk.

11 THE COURT: Your motion is denied.

12 (In open court.)

13 Q Officer, can you tell the Court and jury what was
14 contained in the little black bag?

15 A It was \$11,500 in US currency.

16 Q Can you again tell the Court and jury what
17 denominations?

18 A I know 10's and 20's, that is what I can recall
19 offhand.

20 Q Has this currency been handed over to the
21 Internal Revenue Service?

22 A Yes, it has.

23 MR. SLOTNICK: Objection.

24 MR. MC ALEVY: Objection to the leading. What
25 difference does it make?

THE COURT: Well, I suppose as to the leading I

1 want you to pay attention to that, Mr. Feffer.

2 As to what difference it makes, I will allow it.

3 Q Officer, do you know what was ultimately done
4 with the \$11,500?
5

6 MR. FEITELL: I object unless he knows of his own
7 knowledge.

8 Q Do you know from your own knowledge?
9

10 THE COURT: He didn't answer the question, is that
11 right? The objection is sustained. Find out if he knows of
12 his own knowledge.

13 Q Do you know of your own knowledge, officer, what
14 was done with the \$11,500 through official records?

15 A I read official records that indicated --

16 MR. FEITELL: I object to this, your Honor.

17 THE COURT: Sustained.

18 MR. FEITELL: I move that it be stricken, so much
19 of the answer as he gave and the jury be instructed to
20 disregard it.

21 THE COURT: I won't strike it. That is why I
22 sustained the objection to his reporting. He told what the
23 basis of the alleged knowledge is and this way he made clear
24 that it is hearsay and that is why I won't let him give it.
25 Let it stand.

MR. FEITELL: Will you please instruct the jury --

1 THE COURT: No, I will not. Please, let us go on.
2
3 I think they understand what I said.

4 Q Officer, were Guarino and Dellacava prosecuted by
5 the state as a result of this seizure?

6 A No, they were not.

7 Q Directing your attention to four conversations
8 between Stephen Dellacava and an individual that you
9 identified previously as Vito Green of December 11, 1971,
10 7:16 p.m.; December 11, 1971 at 8:20 p.m.; December 25, 1971
11 at 8:15 p.m.; January 7, 1972 at 6:01 p.m. --

12 MR. FEITELL: I object to this, your Honor.
13 I don't think this witness has on the record thusfar
14 identified Vito Green as a voice familiar to him.

15 THE COURT: Well, I don't know what you are
16 objecting to but he just said he is going to talk about
17 certain conversations. Whatever foundation needs to be laid
18 I will allow Mr. Feffer to attempt to lay it.

19 I don't know whether he will succeed.

20 Q Can you relate to the Court and jury the substance
21 of these four conversations?

22 A I believe in the first --

23 THE COURT: Mr. Feitell raised a question of whether
24 he identified on the record or indicated any way on the
25 record that he can identify the participants.

MR. PEPPER: He previously identified them.

THE COURT: I am not sure that it has been presented or any attempt made to present it to this jury and I think you better.

MR. PEPPER: I believe it was but I will do it again.

THE COURT: I may well be wrong but you'd better cover it. Is that the objection?

MR. FEITELL: Yes, your Honor.

Q Officer, have you overheard either prior to these dates or since these dates the voice of Vito Green, an individual that you know of?

A I heard him on the telephone, yes.

Q Are you able to identify for us his voice?

A Yes. In one instance he was inside Diane's Bar and he made two phone calls out. Shortly before the completion of the second call that he made or right after it I went around to Diane's Bar and saw him inside the bar and saw him leave the bar.

Q So you are able to --

MR. FEITELL: I don't think that is sufficient foundation. All of the identification appears to be based on telephone calls that he heard. He doesn't testify that he ever spoke to Vito Green or overheard him talking into the

1
2 phone so his testimony is no better now. It is all
3 telephone-derived audition.

4 MR. FEPPER: Your Honor, I was going to conclude
5 with another question which goes to this objection.

6 THE COURT: Go ahead.

7 Q Did you then listen to the conversations which
8 you have observed Mr. Green having --

9 MR. FEITELL: That is leading.

10 THE COURT: It is a little leading and I think
11 you have to go back and do it step by step.

12 Q What did you do following your observations of
13 Mr. Green speaking on the phone in Diane's Bar?

14 A No, I did not observe him on the telephone.

15 Q Where did you observe him?

16 A Inside Diane's Bar. This is just after the
17 conversations had occurred.

18 Q What did he do after that?

19 A He got into a car with a female.

20 Q Talking about with respect to being able to listen--

21 MR. FEITELL: Objection to the leading.

22 MR. FEPPER: I would like to clarify, your Honor --

23 MR. FEITELL: You are putting testimony.

24 Q Did you have occasion to listen --

25 MR. FEITELL: Objection, your Honor, leading him

right into it, and the witness has skipped over it a couple of times now and keeps being brought back.

THE COURT: Let us make clear that the witness to whom I have listened and who just a minute ago corrected counsel when a question implied an answer, is under oath and I will allow a little room here, Mr. Feffer, because you seem to have some difficulty.

But I will instruct you to frame these questions with as much circumspection as you can and let the witness tell you what he claims to know, rather than just responding to leading.

I think possibly you would have an easier time if I may suggest if you just start over again.

MR. FEFFER: Fine.

Q Officer Eaton, you testified you are able to identify the voice of Vino Green. Will you tell the Court and jury how at this point in time you are able to identify his voice on the telephone?

A On the -- I forget the date -- but the date that he made two phone calls outside of the bar, to me it sounded like a male black, a big man, who, after these calls or I think shortly before the second call ended, I went around Diane's Bar, not inside, and the only people inside the bar, who could be seen from the street, there was two

black people, one the Green and one the woman he came out with later. This is how I deduced it was him on the phone.

MR. FEITELL: I think we have the answer, Judge.

MR. PEPPER: May I finish the question?

MR. FEITELL: You started saying no.

MR. PEPPER: I said did you.

MR. FEITELL: I beg to differ with counsel.

Q Following these observations what did you do with respect to identifying his voice?

MR. PEPPER: May I lead to stay away from the surveillance?

MR. FEITELL: I would say he led far enough. Now we know how it is that he identified the voice, if that is what he did.

MR. PEPPER: I can have the witness go through the surveillance if Mr. Feitell wants it.

THE COURT: Come to the side bar, and let us see how we can save time.

(At the side bar.)

MR. FEITELL: Well, it is quite apparent this witness thinks that the voice he heard was a voice of a black man who was rather large in size. I think he has some preconceptions about what a black voice sounds like and what the black voice of a large man sounds like and that

is all we got so far.

THE COURT: He said he looked through and saw the only black male in there.

MR. FEITELL: He couldn't see in the back of the premises and who was sitting at the tables and all over. He looked through the window and saw a black male and he didn't exclude to a reasonable possibility the presence in the bar of other people, black persons, and, besides, I have heard white persons in the courtroom who sounded like black people and I don't think this is an identification unless we were to adopt a view now that there are racial means by which to identify an individual voice.

MR. FEFFER: What I was going to get to was the individual surveillance because the individual who is named Vino Green in this conversation --

THE COURT: Why don't you ask him how he attached the names to the voice?

Is there somebody using the name in the conversation?

MR. FEFFER: I will have to check on the conversation but he did use Vino Green in one conversation.

THE COURT: On the one overheard?

MR. FEFFER: I don't know that answer.

THE COURT: Why don't you ask him did the

individual ever identify himself by name.

MR. FEITELL: I deal with these one at a time and we now had this conversation and he jumps ahead with another conversation.

THE COURT: I am not dealing with them one at a time, Mr. Feitell and it is for me to decide. You laid foundation whether at some point in this overhearing he heard this voice referred to itself by name.

MR. FEFFER: All right.

MR. FEITELL: Could you make a representation whether it is in that transcript because you seem not to be sure.

MR. FEFFER: I am going to ask him.

MR. FEITELL: What you are doing is throwing a question out and it is an unfair predicate.

THE COURT: I would like to find out what all the shooting is about. Suppose it is X instead of Vino Green does it make any difference to the government case?

MR. FEFFER: Except Vino Green is a co-conspirator and the conversations are admissible only if they are in the furtherance of the conspiracy and by a co-conspirator.

But in terms of this particular conversation, no.

THE COURT: This is a conversation between Green and who?

MR. FEFFER: Dellacava.

But to get in the conversation of a third party not a co-conspirator, they would object to that.

THE COURT: I don't care whether they would or would not. If Stephen Dellacava is walking down the street and said "Feffer, how would you like to buy a key?" and you said "Yes" and so on; I assume that conversation can be gotten in even though you are not an alleged co-conspirator.

MR. SLOTHICK: How would that be used against my client?

THE COURT: Because of Dellacava's incriminating statement and if the only one incriminated is Green who cares? That is why I don't --

MR. FEFFER: They are both incriminated, your Honor.

THE COURT: The point for you is not that you are hanging Green as you allege here but you are using it against Dellacava and others.

MR. FEFFER: That is correct.

THE COURT: This is making a mountain out of a mole hill but you should let --

MR. FEITELL: There is a reason, an additional reason because we are dealing with a string of conversations and he can't identify one conversation that it is Vito Green

1 and he is going to have an attempt made to identify
2 other individuals as Vino Green and he is going to have the
3 benefit of a string of conversations which is added
4 strength to this, connecting the conversations together.
5 It is the thread.
6

7 THE COURT: That is what I think is a tempest
8 in a mole hill -- a new expression. The jury can hear
9 whether it is the same voice and it doesn't matter whether
10 it is X or Y or Ginsberg. If he is trying to connect them
11 and makes it an individual who is not here on trial, I
12 really couldn't care less whether it is Green, but you have
13 your objection.
14

15 You find out whether he heard the name and
16 I am going to overrule the objection.

17 MR. FEITELL: I am going to abide by your Honor's
18 ruling but --

19 THE COURT: You would like it rephrased?

20 MR. FEITELL: I am going to object to the leading.

21 MR. PEPPER: To clarify it, we will definitely
22 try to show a man named Vino Green, like Brown and other
23 people, were customers.

24 THE COURT: I understand that but I don't think
25 his name makes the least bit of difference.

MR. FEITELL: It does for me.

2 He is named as a co-conspirator.

3 MR. SLOTNICK: Whatabout my objection with
4 regard to incriminating aspects of this attaching to my
5 client. What I am indicating is it is irrelevant to
6 Capra.

7 THE COURT: We have been through this a lot.

8 MR. SLOTNICK: I want to preserve the point for a
9 simple reason --

10 THE COURT: You have preserved it and it is
11 overruled.

12 MR. SLOTNICK: Perhaps my edification and for the
13 Court's earlier in this case I said something about
14 Kottenkos and that is why I am awfully wary of this that
15 this may be a completely separate and different conspiracy
16 with regard to Dellacava and his little phone and who he
17 speaks to.

18 THE COURT: I understand you. It may be and we
19 will get back to this before we instruct the jury or rule
20 on motions, in the opposite order.

21 MR. FEITELL: Your Honor, you are ruling to
22 permit counsel to ask questions in a way that goes to the
23 individual on the other end? I am not buying it but I would
24 like to know if you are laying down a guideline --

25 THE COURT: No, this is not a guide rule. I am not

selling it. You may ask what I told you.

MR. PEPPER: Yes, your Honor.

2 (In open court.)

3 BY MR. FEFFER:

4 Q Officer Eaton, you just testified to observing
5 a certain individual in Diane's Bar. Did you subsequently
6 attach a name to a telephone conversation to this individual
7 that you observed in the bar?

8 A Yes, I did.

9 MR. FEITELL: I will object to it.

10 THE COURT. Let me ask you. When you observed
11 this individual in the bar, did you know his name?

12 A I had to identify him by pictures and from the
13 automobile that he drove, and the address he came back to.

14 THE COURT: When did you do that, if ever?

15 THE WITNESS: After I got back the plate number,
16 within --

17 THE COURT: You mean you saw this person in
18 the bar, and you looked at his physical characteristics and
19 later you looked at some picture?

20 THE WITNESS: Yes.

21 THE COURT: And did you then, as a result of
22 that, associate a name with that individual?

23 THE WITNESS: Yes, I did.

24 THE COURT: And that was the name we have heard
25 here?

1
2 THE WITNESS: That is correct.

3 THE COURT: What name is that?

4 THE WITNESS: Vino Green.

5 THE COURT: Now, Mr. Feffer is asking you about
6 some conversations at the end of '71 or alleged conversations
7 in early '72. Did you at or about that period ever hear
8 any conversation of a voice that identified itself, in the
9 course of the conversation, as belonging to that person.

10 You object to that, Mr. Feitell?

11 MR. FEITELL: Yes.

12 THE COURT: You may answer.

13 THE WITNESS: No, I didn't.

14 THE COURT: You did not?

15 THE WITNESS: No.

16 THE COURT: Did you ever at any time hear such
17 a conversation?

18 MR. FEITELL: I object.

19 THE COURT: All right. You may answer.

20 THE WITNESS: I believe I have heard his alias
21 used on ---

22 THE COURT: No, I didn't ask you that. Did you
23 ever hear a conversation in which he was, he identified
24 himself or was otherwise identified by the name that we
25

are talking about here?

THE WITNESS: No.

MR. FEITELL: Objection.

THE COURT: All right, Mr. Feffer.

MR. FEFFER: I didn't hear the answer to that question, your Honor.

THE COURT: The answer was no.

MR. FEFFER: At this time, your Honor, I would like to play for the Court and jury the four conversations, December 11, '71, 7:16, December 11, 1971, 8:20, December 25, 1971, 8:15, January 7, '72, at 6:01 P.M.

MR. FEITELL: I have two objections.

THE COURT: Two are December 11 and what is the third?

MR. FEFFER: The 25th of December 1971 and --

THE COURT: You mean the 27th.

MR. FEFFER: 25. 27, I am sorry, your Honor, 27. And January 7, at 6:01 P.M.

MR. FEITELL: I object, your Honor, if I may state my reasons for the record.

THE COURT: Yes.

MR. FEITELL: First of all, the jury has in its possession transcripts which bear the name Vito Green.

1
2 THE COURT: They don't yet.

3 MR. FEITELL: I am sorry.

4 THE COURT: But go ahead. They may soon.

5 MR. FEITELL: I am going to move that any
6 references to the identity of the individual be stricken.
7 And secondly, since the identity of the other person has
8 not been satisfactorily established as a matter of law,
9 and fact, I object to the playing of any of the conversations.

10 THE COURT: I take it at this point there is no
11 issue before us as to the witness' identification of the
12 voice of the other party to these conversations, which is
13 indicated in each instance to have been Mr. Dellacava, is that
14 right?

15 MR. FEITELL: I am not raising that objection.

16 THE COURT: But I take it there is no such
17 objection?

18 MR. FEITELL: That is correct.

19 THE COURT: On the basis of that and the things
20 touched upon in our side bar conversation, and on my
21 understanding of this evidence, which is debatable, I will
22 overrule the objection, and allow this.

23 MR. FEITELL: Is this limited to the playing?

24 THE COURT: No, I am allowing the playing and
25 the transcript.

Now let me repeat something that I indicated to the jury. I am allowing these transcripts to come before you. They are just pieces of paper really which have no weight of their own with respect to anything that may be in dispute.

And to remind you of what I said about that on Monday, I will try to be more brief: As to the contents of these conversations, as things now stand, these tapes, having been listed to by all these people to the extent necessary, the words or the lack of words are agreed to be a fair, a correct reflection of what you heard on the tape.

But as to anything disputed, these transcripts have no force. And let me be specific. You are surely aware now that there is some dispute as to whether this officer could adequately connect a voice with a person named Vito Green. And you have heard his testimony about that, and the testimony is not, I may say, overwhelming. But you have heard what he bases it on, the combination of overheard conversations at this and perhaps other times, plus his observations through the window of the bar and so on.

On the basis of that, this officer's testimony is meant to support the position that one of the voices in the four conversations you are about to hear is that of

2 somebody named Vino Green.

3 The other voice, it is said, being that of Mr.
4 Dellacava, the defendant.

5 Now, the transcript labels these as conversations
6 between Dellacava and Green. What I am telling you very
7 simply is, the fact that the transcript says Green doesn't
8 mean it was Green, because that is disputed. And that is
9 for you to decide along with all manner of other factual
10 issues that we will leave for you when the evidence is
11 all in.

12 It is with that understanding and that clear
13 limitation that I am allowing these transcripts to be placed
14 before you while you listen to the tapes. Remember, however,
15 that whether this other party was Green is an issue of
16 fact for you to decide as triers of the facts.

17 MR. FEITELL: Your Honor, I have another remark
18 to make and that is with respect to your Honor's ruling
19 to which I take exception, I object to it, because you are
20 giving this issue to the jury as a question of fact, and I
21 say that as a matter of law it is an issue for your Honor
22 to determine, and there is no issue of fact, and that there
23 is insufficient proof as a matter of law to leave this as
24 an issue for the jury.

25 THE COURT: Look, I understand that, Mr. Feitell.

1
2
3 MR. FEITELL: I just want the record to be
4 clear.

5 THE COURT: The record is perfectly clear, and
6 now I am compelled to say that whether something is an
7 issue of fact or an issue of law is itself an issue of law,
8 and for better or worse, I sit here to decide issues of
9 law.

10 I have decided this one, overruling certain
11 objections that were made in your presence and at the side
12 bar. And as you may gather, Mr. Feitell disagrees with
13 my ruling, which is his prerogative. It is not, however,
14 your prerogative.

15 I have to give you the law and put it on this
16 record the best way I can. If I make an error, somebody in
17 a higher court can correct it. But in order for this system
18 to work lawfully, since you don't express your views about
19 the law on the record, your obligation is to follow my views
20 of the law as I declare them in rulings in the course of
21 this trial. Otherwise we would have an anarchic system if
22 the jury in the jury room went on its own beliefs about what
23 the law ought to be and I think we will leave it at that.

24 MR. FEITELL: And in the light of your Honor's
25 ruling I have to also object on a further ground, to this

1
2 effect, that the conversations are so short and that no
3 transcript is necessary as an aide-memoire for the jury,
4 because they are short and clear, and the appearance of that
5 individual's name on balance is prejudicial.

6 THE COURT: All right, that is overruled, too.

7 MR. SLOZNICK: I would join, your Honor, and
8 move to strike all these conversations at this point as being
9 irrelevant to these proceedings.

10 THE COURT: All right, let's proceed.

11 MR. PEPPER: Your Honor, 75F, G, H and I.

12 (Government Exhibits 75F, G, H and I were
13 received in evidence.)

14 (Handed to the jury.)

15 MR. PEPPER: We can play these one after another,
16 your Honor, and pass out the transcripts at the same time.

17 THE COURT: All right.

18 MR. PEPPER: Has everyone a copy of F, G, H
19 and I? The number is at the bottom right-hand portion of
20 the transcript.

21 Okay, we will play conversation F first, your
22 Honor.

23 (Conversations played.)

24 BY MR. PEPPER:

25 Q Officer, during the course of your investigation,

1 did you ever learn that Stephen Dellacava was connected
2 with a moving van company?

3
4 MR. FETTEL: Objection, your Honor. Calls
5 for an answer which may be based on hearsay. And I don't
6 think it is a question fairly put based upon anything that
7 is before the Court or before the jury because there is no
8 testimony --

9 THE COURT: In light of that objection you
10 may ask him only about his personal knowledge.

11 Q Officer, what period of time have you had
12 Stephen Dellacava under surveillance?

13 A From December 1971 to April 1973.

14 Q During the course of that time, did you observe
15 Dellacava ever working in connection with a moving van company?

16 A No.

17 Q Officer Eaton, I am now going to direct your
18 attention to five conversations between John Capra and
19 Stephen Dellacava, January 14, 1972 at 6:48 P.M., January
20 18, 1972, at 6:12 P.M., January 20, 1972, at 6:56 P.M.,
21 January 21, 1972, at 4:08 P.M., and January 27, 1972, at
22 6:48 P.M.

23 Can you relate generally to the Court and jury
24 the substance of these five conversations?

25 MR. SLOTNICK: Your Honor, I would object to

1 the question being answered in view of the fact that it
2 is my contention, I object to it, that these conversations
3 are not relevant to this case at hand.
4

5 THE COURT: All right, that is overruled.

6 A Generally, John Capra in some of those conversations
7 had inquired of Stephen Dellacava whether he saw some-
8 body or talked to somebody or met somebody. In one conversa-
9 tion he told Dellacava "Go up there and we'll split the
10 money later."

11 MR. SLOTNICK: I didn't hear that, your Honor,
12 I am sorry.

13 A In one conversation John Capra told Stephen
14 Dellacava to "Go up there and we'll split the money later."

15 Q Officer, do you know from your investigation,
16 when Capra refers to "up there" where he is referring to?

17 MR. FEITELL: Objection.

18 MR. SLOTNICK: I object.

19 THE COURT: Sustained.

20 Q Did you make observations during the course of
21 your investigation which would give you information as to
22 where Capra was located, personal observations?

23 MR. FEITELL: I object.

24 Q Personal observations, when he makes references
25 to "up there"?

MR. FEITELL: Objection.

THE COURT: Sustained.

MR. FEFFER: At this time, your Honor, we will pass to the jury five transcripts, J, K, L, M and N.

(Government Exhibit 75J received in evidence.)

(Government Exhibit 75K received in evidence.)

(Government Exhibit 75L was received in evidence.)

(Government Exhibit 75M was received in evidence.)

(Government Exhibit 75N was received in evidence.)

(Government Exhibit 75-O was received in evidence.)

MR. FEFFER: This is one complete set. Just pass it over.

(Government Exhibits 75J, K, L, M and N handed to the jury.)

MR. FEFFER: Your Honor, again we can play these five conversations one right after the other.

(Conversations played.)

Q Detective Eaton, I am going to direct your attention to the conversation between Dellacava and Jack Brown on Tuesday, December 21, 1971, at 8:27 P.M. Can you relate the substance of this conversation?

A I believe Dellacava told Brown that they weren't going to have a Christmas party, but he would see

see him on Thursday, which would be December 23, and bring him a present.

MR. FEFFER: Your Honor, I will pass 75-0 to the jury at this time.

(Government Exhibit 75-0 was handed to the jury.)

Q Officer, at this time I direct your attention to December 23, 1971, at 8:30 P.M. The conversation between Dellacava and Capra. Can you relate the substance of that conversation?

A Dellacava called a telephone located in a candy store in the Bronx. He asked for Johnny Hooks or Leo. John Capra eventually answered the phone and spoke to Dellacava. Dellacava asked Capra if he "wanted me to bring them people anything, like a present," something like that.

Capra said yes, and Dellacava asked if he should come up there and get it, and he was told to do that.

MR. FEFFER: I pass P to the jury, too, at the same time.

(Government Exhibit 75P received in evidence.)

(Government Exhibit 75P handed to jury.)

MR. FEITELL: Before this is played, may we be told what is going to be played next?

MR. FEFFER: The two conversations, O and P.

(Conversation played.

MR. FEFFER: We will now play P.

(Conversation played.)

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

200 R. F. WARE, N.Y., N.Y. 10007 TELEPHONE: (212) 605-7450

Q Officer, following this conversation, the 23rd of December 1971 at 6:30 p.m., what, if anything, did you do?

A I believe shortly after 8:30 that evening we followed Stephen Dellacava --

MR. FREITELL: I object unless he says who followed. He said we? Identify the persons.

THE COURT: You and who else?

A Myself and Detective Roche and Patrolman Martyr.

Q Go ahead, officer.

A We followed him to what turned out to be a social club two doors away from the candy store called by Dellacava when he spoke to John Capra.

Upon his arrival he double-parked, went inside the social club, it looked like a meat market. He came out after a while with what appeared to be a set of car keys. He opened up the trunk to a Lincoln bearing New Jersey registration UF0111.

He removed a brown paper package from the trunk of that car, approximately two to three inches by four inches by six inches.

Q What type of car did he remove it from?

A A Lincoln Continental I think.

Q During the course of your surveillance, during this investigation, had you seen anyone in particular

1
2 driving this vehicle.

3 MR. SLOTNICK: Objection, your Honor.

4 THE COURT: On what ground?

5 MR. SLOTNICK: I would like to know when and where
6 and who?

7 THE COURT: Overruled.

8 MR. FEITELL: I object unless it is clear who
9 the person driving was, a person involved in the alleged
10 conspiracy and if it is not a person named in the
11 indictment or otherwise identified as a person so involved,
12 I object to it.

13 THE COURT: Is it not such a person?

14 MR. FEPPER: It is my information it is a person
15 involved.

16 MR. FEITELL: Named to us as a person involved,
17 in the bill of particulars or in the indictment.

18 MR. FEPPER: Yes, as far as I know.

19 MR. FEITELL: We shall see.

20 A I have never seen anybody drive that vehicle.

21 Q What happened at that point then?

22 A He took the brown --

23 MR. SLOTNICK: Your Honor, did I hear what I heard?

24 THE COURT: Yes, you heard what you
25 heard, you always hear what you hear. Please sit down.

2 MR. SLOTNICK: I would like to know, I am not
3 sure of what --

4 THE COURT: Do you want it repeated?

5 MR. SLOTNICK: Yes, I do.

6 THE COURT: Read that answer.

7 (Answer read.)

8 Q What took place at the vehicle, officer?

9 A He removed the brown paper package and placed it
10 in the trunk of his own automobile and returned to the
11 interior of the social club.

12 After a few minutes he came out, got into his
13 automobile, made a U-turn, drove approximately a
14 block from his social club to the Pelham catering
15 establishment. He left the vehicle and went inside the
16 catering establishment, came out carrying a large manila
17 envelope which he also placed in the trunk of his automobile.

18 Q Did you continue surveillance at that point?

19 A I did. Mr. Dellacava took Westchester Avenue
20 to the Bruckner Expressway, eventually ending up on the
21 Cross Bronx Expressway proceeding west.

22 He took the Cross Bronx Expressway to the
23 West Side Highway which he took south, travelling at a high
24 rate of speed during parts of this surveillance.

25 He exited the West Side Highway at West 79th Street.

He drove to West End Avenue and 79th where he made a right-hand turn which became a problem because I thought the other auto had him and he thought I had him. He proceeded south on 79th Street and that is the last time we saw him that evening. He was headed in the general direction of Jack Brown's house.

MR. FEITELL: I object to that.

THE COURT: Sustained. I will strike that out and the jury will disregard it.

Don't volunteer observations like that, officer. He was headed south you said.

THE WITNESS: Yes, sir.

THE COURT: That is all we know about that.

Q Officer, do you know the address of Jack Brown, at that time did you know?

A Not at that time, no.

Q Did you subsequently find out what his address was?

A Yes, I did.

Q What is his address?

A 180 West End Avenue.

Q What avenue is that near?

MR. FEITELL: He asked what his address is. The issue is what was the address.

Q When you found out his address I believe you

testified that to be around the beginning of 1972. Where did you learn Jack Brown resided?

A At that time he lived at 180 West End Avenue, Apartment 1F.

Q What street is that near?

A West 70th Street.

Q Officer, I direct your attention to three conversations on December 29, 1971, the first at 6:50 p.m. between Dellacava and Brown; the second 8:25 p.m. between Dellacava and Capra; and the third, 10:30 p.m. between Dellacava and Brown.

Can you tell the Court and jury the substance of these three conversations?

A In the first conversation between Brown and Dellacava Brown tells Dellacava tell these people that he liked his gifts.

And in the second between Capra and Dellacava, Capra inquires whether another party has something for them.

The third conversation between Dellacava and Jack Brown, Dellacava asks Brown if Brown had told him that he had a present for his people or them people.

MR. PEPPER: At this time we will pass out the three transcripts.

MR. MC ALEVY: Judge, before we do that, may I see

the transcript of 8:25 as per our conversation.

MR. FEFFER: Sure. I will mark it Q, R and S.

(Government's Exhibit 75Q, 75R and 75S received in evidence.)

MR. FEFFER: We have been playing these conversations from 71, 72, 73 and 74 for identification. At this time I would move that all tapes be received.

MR. SLOTNICK: I object to this based on relevancy, your Honor. To those portions my client does not speak as not relevant and the other portions he is heard on, I object as not relevant to this case.

MR. MC ALEVY: I certainly object for the same reasons as co-counsel concerning Guarino.

MR. FEITELL: I don't know whether the entire tape is being offered or that portion dealing with the conversations now to be heard.

THE COURT: It is the latter, is it not?

MR. FEFFER: I offer these four tapes, the only conversations that appear were those played for the jury.

MR. FEITELL: Only those portions of those tapes is being offered.

THE COURT: Those are the only conversations that appear on those four tapes.

MR. BLACKSTONE: I also object, your Honor, the question of the Kotteakos issue.

THE COURT: All right, they will be received.

(Government Exhibit 71, 72, 73 and 74 for identification, received in evidence.)

MR. FEEFER: We will pay Q first.

(Conversations played.)

Q Officer Eaton, do you know a Patrick Vecchio?

A Yes.

Q Can you tell the Court and jury how you know Pat Vecchio?

A In the summer of 1971 I conducted an investigation, a narcotics investigation. One of the subjects of that investigation was Patrick Vecchio.

Q Did you have occasion to place Vecchio under arrest at some point in the fall of 1971?

MR. SLOTNICK: I object unless I can see the relevancy to this case.

THE COURT: Do you want to come to the side bar?

MR. FEEFER: If you like, your Honor.

(At the side bar.)

MR. FEEFER: John Ramos testified that Patrick Vecchio took the first of the Toledo deliveries in April 1971. He was supposed to take the shipment that ended up in

1 Toledo. However he was arrested after, he testified to that
2 and it was after that that they had to find another courier.
3 I want to establish that he was arrested and in jail in
4 October of 1971 when the shipment went to Toledo and
5 therefore it corroborates Ramos' testimony.
6

7 MR. SLOTHICK: Your Honor, the overriding effect
8 of this is to indicate to the jury that Patrick Vecchio
9 was a narcotics dealer just because he was arrested for this
10 crime. That does not necessarily means that he was involved
11 here.

12 MR. PEPPER: He was convicted.

13 MR. SLOTHICK: The overriding balance is the
14 defendant should be given the benefit of this objection.

15 THE COURT: He was convicted for a crime unrelated
16 to what is charged here?

17 MR. PEPPER: Yes. And also is a co-conspirator in
18 this case.

19 THE COURT: I know but --

20 MR. PEPPER: I can leave out the conviction,
21 I just want to establish unless they will stipulate
22 Vecchio was in jail in October of 1971, the whole month.

23 I won't ask anymore.

24 MR. SLOTHICK: I won't stipulate that, I don't know.

25 THE COURT: Why don't you ask where Vecchio was in

that month?

MR. PEPPER: Fine.

THE COURT: Any objection to that? All right.

(In open court.)

Q Officer Eaton, do you know where Patrick Vecchio was during the month of October 1971?

A He was incarcerated, being held in bail --

THE COURT: Just answer the question. He was in jail?

A Yes.

Q In jail or prison?

A Yes.

Q Would that be true for the entire month?

A Yes.

MR. PEPPER: No further questions.

THE COURT: That brings us to about lunchtime. Let us recess for lunch and resume at 2:15, ladies and gentlemen.

(Jury left the courtroom.)

THE COURT: Anything we have to do before lunch? All right, 2:15 p.m.

(Luncheon recess taken until 2:15 p.m.)

2 THE COURT: All right, Mr. Feffer.

3 MR. FEFFER: Your Honor, from about 12:00
4 to 1:00 today, defense counsel and myself reviewed proposed
5 Government Exhibits 26, I believe, through 63, and I
6 believe, and I will have to let defense counsel speak,
7 that with respect to a stipulation as to their authenticity
8 only, I think with respect to most these documents we can
9 agree on a stipulation. It may be necessary to go down
10 each particular document to make sure of that.

11 THE COURT: Well, is it necessary to go down
12 each particular one? What did you gentlemen accomplish
13 when you worked together? Weren't you able to isolate the
14 ones you agreed on and the ones you don't agree on?

15 MR. FEFFER: The reason I say that, your Honor,
16 is because I think some defense counsel do have objections
17 to some of these exhibits and that is what I meant.

18 MR. LEVENSON: Let me clarify my position,
19 your Honor. With most of the documents, I am prepared to
20 stipulate with respect to the authenticity of the document
21 and only to that. I am not prepared to stipulate that
22 documents are relevant or that they should be introduced
23 in evidence.

24 THE COURT: I understand that. Mr. Feffer,
25 as I understand it, is only talking about authenticity.

1
2 MR. FEFFER: That is correct.

3 THE COURT: Let's run through them. It is
4 quicker than debating about them. Where are the documents?

5 MR. FEFFER: Right here, your Honor.

6 THE COURT: All right. Does everybody know what
7 they are?

8 All right, go one by one. Let's proceed.

9 MR. FEFFER: I thought they would voice objec-
10 tions to certain ones.

11 MR. FEITELL: Your Honor, at the right time
12 I would like to reserve the right to look into these items
13 in detail. Although I am ready to stipulate now, I wouldn't
14 want the Court to think I went over these documents at
15 any time in detail. The purport of the offer is rather
16 limited and I am willing to accept it on that level, but
17 I don't want to be taxed by the Court later on by saying
18 I am looking at details of some of these items that I
19 should have done before.

20 THE COURT: Are you prepared to stipulate to
21 the authenticity of all of them?

22 MR. FEITELL: Yes.

23 THE COURT: 26 through 63?

24 MR. FEITELL: Well, on my part, yes.

25 THE COURT: All right, Mr. Slotnick.

1
2 MR. SLOTNICK: There are four documents that
3 I question.

4 THE COURT: Which ones are they?

5 MR. SLOTNICK: There is -- Mr. Feffer knows
6 the numbers of them.

7 MR. FEFFER: I don't know the numbers, I am
8 sorry.

9 MR. SLOTNICK: Well, then --

10 THE COURT: I find that all the time when I
11 save time I waste time. Let's go one by one. State what
12 they are and see who objects to their authenticity. 26.

13 MR. FEFFER: 26, your Honor, is an airline
14 ticket with a charge receipt attached to it; it says Mr.
15 H. Warabel on it, as the bearer of the ticket. And it is
16 charged to George Harris.

17 THE COURT: Any objection to its authenticity?

18 MR. LEVENSON: No, your Honor.

19 THE COURT: All right. 27.

20 MR. FEFFER: 27, your Honor, is likewise an
21 airline ticket in the name of George Harris, with the charge
22 slip aswell.

23 MR. LEVENSON: Give the date.

24 MR. FEFFER: 16 of February 1970.

25 THE COURT: All right. We are talking only about

1 authenticity when I call for objections. Any objection?

2 All right. 28.

3 MR. FEPPER: 28, your Honor, is similarly a
4 charge receipt for an airline flight from New York to
5 Detroit, George Harris, I believe it is February 7, 1970.

6 THE COURT: Objection?

7 Okay. 29.

8 MR. FEPPER: 29 is an American Airline charge
9 receipt for a flight from Detroit to New York City, George
10 Harris, April 7, 1970.

11 THE COURT: I will tell you what, let's save
12 talk. As he finishes, if I hear no objection, just go on
13 to the next one, and we will assume there is no objection
14 to authenticity.

15 MR. FEPPER: 30 is a charge slip, American
16 Airlines, a flight from Detroit to New York City, George
17 Harris, 22 of May 1970.

18 31, a charge slip, American Airlines, flight
19 New York to Detroit, George Harris, May 22, 1970.

20 32 is an airline ticket and a charge slip, charged
21 to George Harris, flight Detroit to New York, 1st of June,
22 1970.

23 33, airline ticket, Eastern Airline charge slip,
24 flight New York to Detroit, George Harris. 6-2-70.
25

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These are all microfilm copies, your Honor, by the way. I believe counsel are aware of that.

THE COURT: Okay. I take it that the lack of objection to authenticity embraces the question of their being microfilms rather than the originals, is that right?

MR. LEVENSON: Yes, your Honor.

MR. FEFFER: 34, charge slip, American Airlines, George Harris, flight from Detroit to New York, June 10, 1970.

35, copy of two tickets, Eastern Airlines, the first one is New York to Detroit, the second one is New York to Detroit, both in the name of George Harris, and a charge slip from Eastern Airlines in the name of George Harris, dated 6-16-70.

36 is a charge slip, flight Detroit to New York, George Harris, June 30, 1970.

37, charge slip, Eastern airlines, George Harris, flight New York City to Detroit, 30th of June, 1970.

38, two airline tickets, American Airlines, one in the name of Earl Simms, the other in the name of Mr. Harris, both from Detroit to New York City. 5th of November, 1970.

39 is two Eastern Airline tickets, one in the name of Ramos, J. Mrs., Jermain, Mrs., both Eastern

1 jkb-6

2 Airlines, New York to Miami, and the date February 26,
3 I believe, 1971.

4 40, two Diners Club receipts for billings,
5 Earl Simms, on both occasions, both for an airline charge.

6 41 is a Diners Club charge receipt, Earl Simms,
7 Hertz Corp., Toledo, Ohio, date 11-7-70.

8 42, a bill from the Town & Country Motel Lodge,
9 New York City, Harris and Simms, 11-5-1970.

10 43, a bill for Earl Simms at the Commodore
11 Hotel, dated December 6, December 7, December 8, 1970.

12 44 is a bill for Mr. Alan Morris and something
13 Middlebrook, Lincoln Square Motor Inn, New York City,
14 arrival date 9-4, departure date, 9-5, 1971.

15 45, registration card for Harold McSpadden and
16 a Mr. A. Morris, Holiday Inn, Toledo, Ohio, arrival date
17 October 30, 31, 1971.

18 46, United Airline ticket from Cleveland, --
19 excuse me, Toledo, Cleveland, New York, in the name of
20 a Mr. J. Messina, and the date is October 20, 1971.

21 47 are the registration cards and bills for
22 a Mr. Alan Schwartz and a Mr. Middlebrook in the Statler-
23 Hilton Hotel in Detroit, and the dates October 21, October
24 22, October 23, 24, 25, 26, 27, 28 -- excuse me, they
25 start before that, it starts with the 10th and runs through

the 28th of October 1971, Statler-Hilton Hotel in Detroit.

48 is the -- looks like an application and related billings of John Capra at the Lake Isle Country Club, New York.

MR. SLOTNICK: Before I consent to that, your Honor, I would like, and I told Mr. Feffer earlier, I reserve my judgment on that, I would like a photocopy of that if the Government could provide it for me, I'd like to look at it and consult with my client and make a decision. I don't think it is vital for this afternoon or tomorrow.

MR. FEFFER: Your Honor, again, I hope Mr. Slotnick realizes that we are talking just about the authenticity of this document.

THE COURT: Yes.

MR. SLOTNICK: I understand that, your Honor.

THE COURT: Well, look, you can do it either way, you can call a witness or do what he asks you to do. I don't want to negotiate. What is your preference?

MR. FEFFER: I will let Mr. Slotnick look this over at his leisure and give us an answer.

THE COURT: That is 48?

MR. FEFFER: Yes.

1
2 THE COURT: Put that aside on this question.

3 MR. PEPPER: 49 is a sales agreement from
4 Eastchester Lincoln-Mercury, Inc., in White Plains to a
5 Leo Guarino for a Lincoln Continental, and the date is
6 5-16-72.

7 MR. MC ALEVY: Judge, I haven't had an oppor-
8 tunity to go over that document with my client. It is
9 only a one-page document.

10 THE COURT: Go ahead, take it.

11 MR. MC ALEVY: Thank you.

12 THE COURT: That is 49.

13 MR. MC ALEVY: That is 49, Judge, and I believe
14 50 also pertains to me.

15 MR. PEPPER: Yes, 50 is a rental agreement
16 from Eastchester Lincoln-Mercury, Inc. for a 1973 Cougar.

17 THE COURT: Mr. McAlevy is looking over 49 and
18 50. And Mr. Slotnick is going to look over 48.

19 MR. MC ALEVY: Judge, just for the record, I
20 would ask that Mr. Pepper give us the date. I don't believe
21 he gave us the date of the 50 document.

22 MR. PEPPER: I said a '73 Cougar, August.

23 MR. MC ALEVY: August of this year, Judge. I
24 have no idea what relevance that would have.
25

1
2 THE COURT: We are just talking about authenticity
3 I don't know if any of them are relevant because we are
4 going a step at a time.

5 MR. MC ALEVY: I understand.

6 THE COURT: All right, let's proceed.

7 MR. PEPPER: 51, sales agreement from Eastchester
8 Lincoln-Mercury in the name of Constance Capra for a 1972
9 Cougar, dated November 9, 1971.

10 52, Eastchester Lincoln-Mercury Sales Agreement,
11 Constance Capra, dated 5-4-72, Lincoln Continental.

12 53, sales agreement, Constance Capra, Eastchester
13 Lincoln-Mercury, for a 1973 Montego, dated June 6, 1973.

14 54 are the telephone toll records, Ida Braser.

15 55, telephone toll records, Allerton Avenue
16 Fish Market.

17 56, telephone toll records, Robert Jermain.

18 57, telephone toll records, Hazel Simms.

19 58, telephone toll records, Alvin Norris.

20 THE COURT: Alvin?

21 MR. PEPPER: Norris. 59, telephone toll
22 records, George Harris.

23 60, telephone toll records, Emma Guarino.

24 MR. MC ALEVY: Your Honor, may I take a look
25 at those also?

1
2 THE COURT: All right.

3 MR. PEPPER: 61, telephone toll records, John
4 Capra.

5 62, telephone toll records, Christine Johnson.

6 63, telephone toll records, C. S. Dellacava.

7 MR. FEITELL: We would like to see those, too.

8 THE COURT: That is 63. What is the Government's
9 proposal? Do you plan to proceed to offer these this
10 afternoon?

11 MR. PEPPER: That is correct, your Honor.

12 THE COURT: Pardon?

13 MR. PEPPER: Yes.

14 THE COURT: What is the pleasure of defense
15 counsel? Do you want to have them offered one at a time
16 and have your other objections than authenticity stated
17 before the jury?

18 MR. SLOTNICK: I think we can do it now,
19 your Honor, without the jury. In fact we --

20 MR. BLACKSTONE: I would like to state my
21 objection before the jury.

22 THE COURT: Why?

23 MR. BLACKSTONE: Because they are offering many
24 tickets, airline tickets, showing Mr. Harris' presence in
25 New York at various times, the implication if it is left

1
2 at that, that somehow or other this related to narcotics
3 activity, when in fact that only I believe one of the
4 particular tickets can be shown to relate to a particular
5 date in which there has been testimony --

6 THE COURT: You can argue that to the jury,
7 but if I overrule that on the grounds of law, there is no
8 reason why the jury needs to be enlightened by that legal
9 discussion.

10 MR. STONE: I would prefer outside the jury..

11 THE COURT: There is a division of opinion.

12 Which gives me an opening. I will rule that we
13 will hear the objections right now.

14 I don't think they should take very long. Do
15 you want about five minutes and then we will come back and
16 do the objections?

17 MR. STONE: You are going to keep the jury
18 the rest of the afternoon?

19 THE COURT: No, I don't think these objections
20 should take that long, should they? You want me to
21 dismiss the jury?

22 MR. FEFFER: I think it might be necessary,
23 your Honor, in view of discussions that we had with counsel
24 over lunch.

25 THE COURT: I see. All right, then let's have

1 the jury in so we can tell them good night, and we will
2 have them back in the morning.

3 Does anybody object if we start court tomorrow
4 at 10:30 instead of ten o'clock?

5 All right.

6 MR. FEITELL: Judge, with respect to some par-
7 ticulars --

8 THE COURT: Wait till we get the jury out and
9 then we will talk about each of these items in turn.

10 (Jury present.)

11 THE COURT: We just asked you to come in to tell
12 you you are going to have an early day today. We are
13 going over some questions as to proposed exhibits and they
14 will take a little more time than we had anticipated, and
15 there is no point in keeping you waiting while we do that.

16 So we are going to relieve you at this time, and
17 ask you to plan to resume tomorrow morning at 10:30 rather
18 than 10:00.

19 We will all try very hard, and I trust we will
20 succeed in being on time.

21 And now, good afternoon to all of you.

22 (Jury left the courtroom.)

23 MR. LEVENSON: May we have five minutes to discuss
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A That is correct.

Q Did you take the money with you?

A No, I did not.

Q Mr. Harris didn't go with you there?

A No, he did not.

Q Now, as I understand it then, when you got to New York you conferred with Mr. Jernain and you discussed the fact that there was supposed to be a half kilo of heroin to be returned to Mr. Harris?

A I did.

Q And the transaction did not occur that evening, is that correct?

A It did not.

Q And you waited the following day?

A I did.

Q And your whole purpose in going there was to receive a half kilogram of heroin, is that correct?

A It was not.

Q One of your purposes?

A One of the purposes, yes.

Q All right. You returned to Detroit by plane?

A I did.

Q And you were arrested in Detroit?

A I was.

Q And where were you arrested in Detroit?

A I was arrested at the landing where the cabs stop to pick up passengers.

Q And you were carrying some packages, luggage?

A I had luggage, yes.

1 Q And you were arrested for possession of a half
2 a kilo of heroin, is that correct?
3

4 A I was.

5 Q And the package was found inside your luggage?
6

7 A Yes.

8 Q One of the reasons you went there was to pick
9 up a half kilogram of heroin?

10 A That was one of the reasons.

11 Q You don't know how that heroin got in that
12 package?

13 A I do not.

14 Q When you pleaded guilty before his Honor, Judge
15 Frankel, although the Government indicated that they
16 would recommend leniency and probation -- the Government
17 did indicate that to you, is that correct?

18 A The Government did not indicate to me that
19 they would recommend probation.

20 Q Well, they indicated to you that they would
21 recommend a sentence less than five years?

22 A Yes, they did.

23 Q And Judge Frankel indicated to you at that time
24 that when he considered the question of your sentence he
25 would take into consideration what you say here, is that
correct?

1
2 A Restate the question, please.

3 MR. BLACKSTONE: I have lost my place on these
4 minutes, your Honor. I am going to have to ask for
5 a moment.

6 (Pause.)

7 Q Well, the Judge indicated to you at the time
8 of your plea that the matter would be adjourned for a
9 sentence, is that correct?

10 A That's correct.

11 Q And he told you that he gets a probation report,
12 is that correct?

13 A Yes.

14 Q And he also told you that he was going to listen
15 to your testimony?

16 A Yes.

17 Q And see what kind of person you were, and the
18 extent of your involvement?

19 A That was not mentioned.

20 Q That was not mentioned?

21 MR. BLACKSTONE: Now I do need a few minutes,
22 your Honor, if I may.

23 (Pause.)

24 Q I show you a copy of the minutes of the pleading
25 that you made before Judge Frankel, and where it says "Q",

1 that is the Judge speaking, and I was wondering if you
2 would read the paragraph beginning here as to what Judge
3 Frankel told you generally about the sentencing process.
4

5 MR. FELD: I am going to object to this pro-
6 ceeding, your Honor.

7 THE COURT: You are asking him to read it to
8 himself or --

9 MR. BLACKSTONE: Yes.

10 THE COURT: I will allow it.

11 (Pause.)

12 MR. BLACKSTONE: It starts on Page 10, bottom,
13 to the top --

14 MR. FELD: All right.

15 Q Now, have you refreshed your recollection that
16 Judge Frankel told you that in this probation report the
17 Judge learns about what the person did wrong, the extent of
18 the person's involvement?

19 A That is not the question you asked me. I
20 admitted that he had said --

21 Q Now --

22 A -- that the probation report would be given to
23 him.. But that is not the last question that you asked me.

24 Q Well, you know, do you not, sir, that the
25 extent of your involvement, your culpability in a case

jkb-5

Sims-cross

1 compared to other people, is a factor that is taken into
2 consideration on the sentence, is that correct?

3
4 A I have never been in court before and you will
5 have to repeat the question because I don't understand it.
6 I don't understand what you are saying.

7 Q In your testimony here don't you essentially
8 make yourself out to be some courier rather than someone
9 who is important in a narcotics ring?

10 A No. I am not making myself out to be anything.
11 I am just telling the --

12 Q Well you --

13 THE COURT: Let him finish.

14 A I am just telling the sequence, the incidents,
15 the best I can remember. I am not making myself out to be
16 anything.

17 Q But, in the December incident, you say that you
18 went in to purchase a half a kilogram of heroin, but you
19 are just a courier, it was Harris who ordered that, is that
20 right, it wasn't you, it wasn't your transaction, it was
21 Harris, right?

22 A I had no money. Evidently the money must have
23 already been there. I don't know the relationship between
24 him and Mr. Jarman entirely.

25 Q And that is another thing, you have been making

redirect

no money since you started working with Marabel, is that correct? You are the underdog?

A Are you asking a question or are you --

Q Is that right?

THE COURT: He is right, are you asking a question? If you are, I sustain his objection to it.

MR. BLACKSTONE: I have no other questions.

THE COURT: All right, Mr. Stone. Any cross-examination?

MR. STONE: No, I waived yesterday.

THE COURT: Oh, you did.

MR. STONE: Emphatically.

THE COURT: Who is left, if anybody else?

MR. STONE: I think everybody want.

THE COURT: Any redirect?

MR. FELD: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. FELD:

Q Now, with respect to your trip approximately November 5, the trip where you had dinner with Mr. Jermain, Mr. Harris and Mr. Ramos, the following day you went downtown, is that correct?

A Yes, we did.

Q And what did you do after you went downtown?

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1
2 A After we went downtown, we ate --

3 MR. BLACKSTONE: I am going to object to this
4 as being asked on direct, answered, asked again on cross, and
5 answered.

6 THE COURT: Sustained.

7 Q When you arrived at Hugh Grant Circle that night,
8 was there a liquor store there?

9 MR. LEVENSON: Your Honor, I think this was
10 also gone into on direct. I don't think any new material
11 came out with respect to this.

12 THE COURT: Didn't you cover this in direct?

13 MR. FELD: Not this particular point, your
14 Honor.

15 MR. BLACKSTONE: Now he is leading the witness
16 and I object.

17 THE COURT: Well, I will allow it.

18 A Would you restate the question, please?

19 Q Do you recall whether there was a liquor store
20 at Hugh Grant Circle?

21 A Yes, there is.

22 Q Did you go into that store?

23 A I may have. I really don't recall.

24 Q You were at Mr. Harris' house, were you not --

25 MR. LEVENSON: Your Honor, this is leading.

jlb-8

Sims-redirect

THE COURT: Yes, sustained.

Q Could you describe Mr. Harris' house?

MR. LEVINSON: I believe this was gone into on direct examination, your Honor. I don't think there was any cross-examination with respect to Mr. Harris' house. I don't think it is proper redirect.

THE COURT: I don't remember. If that is the only problem, I will allow it.

Q Can you describe Mr. Harris' house?

A Well, it's a --

Q Where was it located first?

A It is on Oxley in Detroit, Michigan.

Q And could you describe it to the best of your recollection during this period of 1970?

A It is a large ranch style home, has an oak-finished den, has a large living area in front, with plate glass windows across the front, it has a dining-room off to the back and a kitchen off to the right of that, built-in kitchen, dishwasher, stove, and so forth. It has a bathroom at the top of the steps, one in the basement. It has a master bedroom on the front part of the house. It has got a bathroom next to the master bedroom. It has a guest room off to the rear corner of the house, and it has a bedroom in between the guest bedroom and the dining-room.

1
2 MR. PEPPER: That would also be true with respect
3 to Mr. Slotnick on Exhibit 51. I furnished him a copy.
4 I will give him the original for this purpose.

5 MR. SLOTNICK: Your Honor, upon investigation,
6 I found that this is an accurate, true copy of the purchase
7 that was made --

8 THE COURT: So you withdraw your objection?

9 MR. SLOTNICK: I withdraw my objection as to
10 authenticity and my next objection would be as to relevance.

11 THE COURT: All right. State it because I have
12 ruled on all those with the other exhibits.

13 MR. SLOTNICK: I find that presenting this
14 piece of evidence before the jury is irrelevant to the
15 case at hand, because it merely shows an automobile was pur-
16 chased by the defendant's wife. At no place does it have
17 the defendant's signature nor is there any indication that
18 the defendant at that time was aware of the purchase nor
19 where the funds came from, and the fact of the matter is
20 that it is not even a total cash purchase, it is a finance
21 purchase with some cash involved, and I think that to put
22 this in together with the other car is cumulative.

23 We would again stipulate that during the period
24 of time in question, a 1972 Cougar was owned by Mrs. Capra
25 and probably used by Mr. Capra.

1 jkb
2 THE COURT: I realize it is cumulative,
3 Mr. Slotnick, but for whatever it is worth I take it
4 that is the point that the Government is offering it and
5 that is what the Government claims makes it relevant.

6 MR. SLOTNICK: My objection is to relevancy.

7 THE COURT: That objection will be overruled.
8 What was Exhibit 50?

9 THE CLERK: That is another agreement to purchase
10 an automobile by Mr. Guarino.

11 THE COURT: Is that the same matter or had you --

12 MR. MC ALEVY: Judge, I believe --

13 THE COURT: Wait just a second. Let me just
14 get the answer to my question. 50, I think is another
15 Capra automobile thing.

16 THE CLERK: 50, we left out.

17 MR. FEFFER: 50, I think was excluded because
18 of the time.

19 THE COURT: 50 has already been ruled on.

20 MR. FEFFER: Right.

21 MR. MC ALEVY: If the Court please, 50 was
22 the Cougar which stated Mr. Guarino rented in August of
23 this year. Your Honor excluded that.

24 MR. SLOTNICK: With respect to 51, it comprises
25 two sheets of paper, one of which, the top sheet has Constance

1 jkb

1451

2 Capra and then there is some crossouts which are very
3 evidence and obvious to the jury.

4 The second sheet, which purports to be a
5 carbon copy, does not contain the name of Constance Capra
6 but contains the name of another individual, one Anthony
7 Barbagallo. I think that would not be relevant to the
8 case.

9 The second sheet is a yellow sheet of paper
10 which does not contain the crossouts, and does not contain
11 the name of Constance Capra.

12 What I am asking, since your Honor has ruled
13 against my objection, that the crossouts on the first white
14 sheet of paper be so crossed out or so negated that the jury
15 could not see that, just the name of Constance Capra be
16 left, because there always arises the spectre as to why
17 someone else's name is on an order form and then crossed
18 out, and that may be for another day and another trial.

19 THE COURT: Let me ask you this: Are there two
20 exhibits relating to Capra automobiles in this sheaf?

21 MR. FEFFER: No.

22 THE COURT: In this list of exhibits that
23 we have been talking about yesterday afternoon?

24 THE CLERK: 51 and 52.

25 THE COURT: 51 and 52?

1
2 THE CLERK: Yes, sir.

3 THE COURT: I would like you to see whether you
4 can stipulate on both of them, if that is agreeable, because
5 I think piling up all these papers is not necessarily
6 desirable.

7 Would you be interested in that, Mr. Slotnick?

8 MR. SLOTNICK: Very much so, your Honor.

9 THE COURT: See if you can include those two
10 things in your -- or add them to, or how you want to handle
11 it, add them to your proposed subject of stipulation and
12 see if you can get it done during a recess or before this
13 afternoon, or whenever the Government is planning to put
14 this material in.

15 And that would make unnecessary the reception
16 in evidence of either 51 or 52; if the evidentiary facts
17 for which the Government wants them can be stipulated.

18 THE CLERK: 52 has been received.

19 THE COURT: I know. Mr. Swanciger reminds me
20 that 52 was yesterday ruled admissible, but I can change
21 that ruling.

22 If you can stipulate 51 and 52, when the time
23 comes, we won't formally place 52 in evidence before the
24 jury.
25

1 jkb
2 MR. SLOTNICK: It is my presumption the
3 reason the Government wants to show this is to show that
4 Capra did have these automobiles at his use at the period
5 of time as testified by Ramos.

6 THE COURT: I assume they also want to show
7 a level of expenditures. Is that correct?

8 MR. FEFFER: That is correct, your Honor.

9 THE COURT: Whatever they want to show.

10 MR. SLOTNICK: We will work it out.

11 THE COURT: See if you can. If you can not,
12 with whatever emendations or corrections, I am going to allow
13 both 51 and 52 into evidence.

14 Anything else, Mr. Feffer? Oh, Mr. McAllevy
15 has 49.

16 MR. MC ALEVY: Judge, with respect to 49, again,
17 which is the unsigned purchase order for a Lincoln, 1972
18 Lincoln Continental, where my client's name is printed in
19 under the purchaser, I would object to this for the reason,
20 your Honor, that this is inflammatory. I have heard no evi-
21 dence in this case that Mr. Guarino didn't have the means
22 or didn't have an income level prior to the date of May
23 16, 1972, where this automobile was allegedly purchase. I
24 have heard nothing from the Government witnesses where this
25 man --

1 ksg 1

2b/1

2 THE COURT: Let's go a step at a time. Are you
3 conceding the authenticity?

4 MR. MC ALEVY: Yes.

5 THE COURT: You concede that. So you are now
6 on relevance.

7 MR. MC ALEVY: Yes, your Honor.

8 THE COURT: I just want to know what we are talking
9 about.

10 MR. MC ALEVY: I certainly feel that there hasn't
11 been one iota of evidence that Mr. Guarino didn't have
12 an income outside of the bland statement by Mr. Ramos which
13 was qualified on cross examination concerning he didn't
14 know how much income he was making from his different
15 endeavors, certainly the fact that a man purchases a
16 Continental in the amount of \$7600, I think, could be
17 very misleading to the jury.

18 Also, your Honor, I have been informed by my
19 client that this was a 36-month payment car and that is not
20 reflected on this document, and my client is in a position
21 where he might be compelled to have to take the stand to
22 qualify this particular agreement in violation of certain
23 of his constitutional right.

24 I really think it is inflammatory and prejudicial
25 towards my client.

THE COURT: I wish you would try to say things about once; it would make it quicker.

On your stipulation of authenticity, it will be received. Your other objections are overruled.

MR. FEITALL: Your Honor, may I be heard?

THE COURT: Yes.

MR. FEITALL: Insofar as any of these offers respecting automobiles will have a spill-over relating to my defendant, I am going to object, because as I understand the Court's comments and concern about the unexplained possession of sudden wealth I, too, don't believe that a record has been made that any of the so-called wealth in this case was suddenly acquired, so I object --

THE COURT: I mentioned suddenness, but I don't think suddenness is critical to this at all, whether in a tax evasion case or a larceny case or a narcotics case.

The fact that there is other evidence from which a jury could infer an engagement in such illegal enterprises gives some initial foundation for adducing evidence of wealth, whether it is sudden or not, especially when it is coupled with evidence from which a jury could infer that there is no legitimate source of that wealth. That is going to be the argument. It is an argument both ways, and I understand your objection.

1 THE COURT: Is there anything else? Go ahead

2
3 MR. BLACKSTONE: That is the ground. There has
4 been no testimony.

5 THE COURT: What is the relevance of Marabel alone?

6 MR. PEPPER: Quite the contrary. They were
7 charged to George Harris. The trip was in February 1970,
8 when John Ramos testified, or approximately about that time,
9 the winter of 1970, testimony that Harris and Marabel came
10 to New York City and met with Ramos and Jermain and discussed
11 the whole beginning of the Detroit operation.

12 MR. BLACKSTONE: The testimony, as I recall, was
13 that approximately March of 1970 the event was said to occur.
14 Now, this is February of 1970, and therefore, there being
15 some question as to whether or not what the Government wants
16 to argue now that this was the date in which these events
17 took place -- the testimony was, and I particularly recall
18 this, it was approximately March of 1970.

19 MR. PEPPER: That may be correct, your Honor, but
20 I would say that February 16th is very close to March, and
21 it fits into approximately March 1970.

22 THE COURT: Yes; I think it is a jury question.

23 Any other objection to this?

24 All right. That will be received.

25 (Government Exhibit 26 for identification was

1 ARP 2

2 received in evidence.)

1419

3 MR. BLACKSTONE: The date of 27, that is --

4 MR. FEFFER: The same date, February 16, 1970,
5 George Harris, Detroit to New York City.

6 THE COURT: The same date? All right. I suppose
7 you have the same objection.

8 MR. BLACKSTONE: Yes.

9 THE COURT: Same ruling. We will receive that.

10 (Government Exhibit 27 for identification was re-
11 ceived in evidence.)

12 MR. FEFFER: Exhibit 28.

13 THE COURT: Any objection to 28?

14 MR. BLACKSTONE: I can't make out the date.

15 MR. FEFFER: Some time in February 1970. I think
16 it is February 18, 1970. That is what it appears to be.

17 MR. BLACKSTONE: Now, we have the situation that
18 the Government will argue one of these presumably is when
19 the Marabel-Harris trip occurred. Now, they will argue
20 whether they occurred on this date or that date, and the main
21 thing is, this is the 16th. That is fine. But this is the
22 18th.

23 MR. FEFFER: It is very hard to decipher, but it
24 appears to be February 18, 1970.

25 THE COURT: We passed the question of authenticity.

So there is no question there there were two different tickets for Mr. Harris.

Now, it may be that he just likes flying. I don't know. But you are beyond that, and I don't know what the two trips were about, but that is for the jury.

MR. BLACKSTONE: Why is it relevant, then?

THE COURT: Because the Government contends there was a lot of traveling back and forth in connection with the enterprise that it claims it has proven, and you contend there was such a trip, which authenticates it, and now you say it wasn't for that at all, and that is a question I will leave for the jury.

MR. LEVENSON: Your Honor, I also have an objection. The testimony is that there was one trip in the winter, in March of 1970. I contend for the Government to take a shotgun approach to this thing and introduce ten airline tickets where this man may have made ten trips back and forth to New York exceeds the bounds of probability.

THE COURT: We have been over this, and I am not the tryer of the facts, and remember, when I rule on evidence don't anybody get upset, but there is evidence from which the jury can infer that not every transaction or trip has been recounted by Mr. Ramos, and I am going to leave that to you to be argued back and forth.

Exhibit 28 will be received.

(Government Exhibit 28 for identification was received in evidence.)

THE COURT: Exhibit 29?

MR. BLACKSTONE: Same objections from 29 through, I believe, Exhibit 38, with the exception of 38, because 38 is November 5th, a date when there is some testimony. From 29 through 37, showing trips to New York, I object for the same reason that I objected to these other instances.

THE COURT: I understand your position, and to save time I make the same ruling. They will all be received.

I don't want to short-cut anybody or short-circuit anybody. Do I hear any other objections on 29 through 37?

(Government Exhibits 29 through 37 for identification were received in evidence.)

THE COURT: Exhibit 38 is received on the same basis. Mr. Blackstone says he doesn't have that objection.

MR. PEPPER: All right.

(Government Exhibit 38 for identification was received in evidence.)

THE COURT: Any objection to 39?

It will be received.

(Government Exhibit 39 for identification was received in evidence.)

1
2 MR. PEPPER: Exhibit 40?

3 THE COURT: Received.

4 (Government Exhibit 40 for identification was
5 received in evidence.)

6 MR. PEPPER: Exhibit 41.

7 THE COURT: 41 is received.

8 (Government Exhibit 41 for identification was
9 received in evidence.)

10 MR. PEPPER: Exhibit 42?

11 THE COURT: Received.

12 (Government Exhibit 42 for identification was
13 received in evidence.)

14 MR. PEPPER: Exhibit 43?

15 THE COURT: Received.

16 (Government Exhibit 43 for identification was
17 received in evidence.)

18 MR. PEPPER: Exhibit 44?

19 THE COURT: Received.

20 (Government Exhibit 44 for identification was
21 received in evidence.)

22 MR. PEPPER: I think 45 is the registration of
23 Morris and Spada at the Holiday Inn in Toledo, Ohio.

24 MR. STONE: Mr. Morris made a request, your Honor.

25 THE COURT: What about Number 45? Let us pass that

for the time being, and let us go to 46.

MR. PEPPER: 46?

THE COURT: All right. It is received.

(Government Exhibit 46 for identification was received in evidence.)

MR. PEPPER: 47.

THE COURT: Received.

(Government Exhibit 47 for identification was received in evidence.)

MR. PEPPER: I don't have 48 and 49.

THE COURT: Mr. Slotnick, are you ready on 48?

MR. SLOTNICK: Yes, sir; I am.

I object to 48, and perhaps I can short-circuit it if the Government wants a stipulation. My client was a member of the Lake Isle Country Club. There is no problem with respect to Exhibit 48.

THE COURT: Is that what you are looking for?

MR. PEPPER: Just as to authenticity.

MR. SLOTNICK: If they want a stipulation, they got it.

MR. PEPPER: I want a stipulation as to authenticity. What you are holding in your hand --

MR. SLOTNICK: With respect to authenticity, your Honor, I will stipulate that these records come from the Lake

1 ARP 7

2 Isle Country Club.

1424

3 THE COURT: Are you stipulating they are authentic?

4 MR. SLOTNICK: Yes.

5 THE COURT: All right. Do you have any objection to
6 their introduction?

7 MR. SLOTNICK: My objection is that I have no idea
8 when the writings took place on it. My client's signature
9 appears at the top of page 1, and then there are a lot of
10 writings thereafter, so I have a problem as to when the writ-
11 ing was put on.

12 The second problem I have is that the rest of the
13 items are bills, or not even bills -- charges billed out
14 without the underlying so-called tabs. I don't know whether
15 my client signed for them or his wife or children.

16 I find them to be irrelevant and highly, highly
17 prejudicial, and I would like your Honor to take a look at
18 them.

19 THE COURT: All right. Why does the Government
20 want to offer them?

21 MR. FEFFER: Your Honor, the Government has main-
22 tained up to this point and will continue to do so, that
23 John Capra made his living through the sale of narcotics and
24 that afforded him a very high life style, including a very
25 nice house, a country club and, as the records show or reflect,

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he was there almost every day, spending large sums of money¹⁴²⁵ for lunch and other items, treating other people at the club et cetera.

It is a demonstration to this jury that this man, who has no other livelihood except narcotics, is in fact reaping the rewards of that activity and shows how he is doing it.

THE COURT: You say that is highly prejudicial?

MR. SLOTNICK: After I have heard this, it is highly prejudicial. If your Honor will look at it first, there is no indication that my client was there on those dates, that these are his actual bills. It is just something that comes up in looking at it. That causes me to tremble.

THE COURT: That doesn't go to authenticity, it seems to me. You dispute that, then?

MR. SLOTNICK: I have a concern about that.

THE COURT: You don't stipulate that?

MR. SLOTNICK: That is correct.

THE COURT: Now, as to this, Mr. Feffer, if all the other objections are going to be overruled, you have to get a witness in. What other objections?

MR. SLOTNICK: My other objection is that they are prejudicial.

THE COURT: What does that mean?

2 MR. SLOTNICK: They serve no real purpose.

3 THE COURT: What about Mr. Feffer's point that they
4 evidence a high standard of living for a man who, there was
5 testimony, had no legitimate occupation?

6 MR. SLOTNICK: There was testimony that he had a
7 legitimate occupation.

8 THE COURT: The testimony goes both ways. That is
9 a jury question.

10 MR. SLOTNICK: That is correct. However, in the
11 use and presentation to the jury of these bills, I look at
12 them, and I am slightly taken aback. Very high bills. If
13 your Honor would look at them --

14 THE COURT: Tell me; you are supposed to tell me
15 your arguments.

16 MR. SLOTNICK: If you look at it, your Honor, it
17 indicates that every day there was someone at the club
18 charging things. There is no testimony that my client was
19 that someone at the club, charging things to the account of
20 John Capra.

21 On the face of it, it indicates that John Capra and
22 Constance Capra and three children -- and here we have each
23 and every day somebody using the club, and my client's name,
24 charging items. It could have been guests; it could have
25 been his children; it could have been anybody else, and I

indicate that to ensure that belief to the jury that my client was at the club each and every day, these do not do that. All I think they show is that someone was charging substantial sums of money on my client's charge account.

THE COURT: All right. I have to sort this out.

Do you claim this shows he was there every day?

MR. FEFFER: Let me just look at them one second.

First of all, we have the testimony of Ramos during the summer of 1970 and 1971 he was present at the club almost daily, playing golf.

MR. SLOTNICK: I don't recollect that testimony, your Honor.

MR. FEFFER: These records do not reflect any individual at the club playing golf, but the point is that it is John Capra who is a member of that club, and whether members of his family or he is playing golf is not the concern. The point is that John Capra maintained himself and his family on a very high standard of living from that narcotics proceeds.

THE COURT: Let me ask you this: is there any learning in the books about this kind of evidentiary material?

MR. FEFFER: All I can say, your Honor, is that based on my personal experience I can't say from books; from other cases of this type we have been permitted to introduce

(In open court.)

MR. SLOTNICK: Your Honor, I have another application to be made in open court.

THE COURT: All right, go ahead.

MR. SLOTNICK: The next witness, as indicated by the Government is one Joseph Conforti, and I do think in an abundance of caution -- I have read the 3500 material that has been provided to me and I have also read Mr. Conforti's testimony in a prior trial. I would suggest, your Honor, that Mr. Conforti's testimony is that which would fit into the Kotteakos problem. Certainly he is going to testify about a separate and distinct conspiracy that he alleges commenced from March of 1973 until April when he was arrested. I don't speak for the defendants Harris and Morris, but certainly they are completely out of what he is testifying to, but as for my client, I would indicate, your Honor, that there is no question in my mind whatsoever that upon reading the 3500 material, and assuming that he will not deviate from his prior trial testimony, that he is introducing a separate and new conspiracy into this case, as with regard to my client.

MR. FEFFER: Your Honor, there has been prior testimony up to this point, before we reach Conforti, in connection with Herbert Sperling.

1 jkb-3
2 Mr. Conforti will testify that for a period, I believe
3 from 1971 late, through 1972 and '73, he was directly
4 involved with the narcotic business of Herbert Sperling.

5 Now, during that same period, John Ramos has
6 already testified to, for example, a conversation that took
7 place in a clothing store between Leo Guarino and Herbert
8 Sperling in connection with receiving narcotics.

9 Now, what this man is going to testify to is
10 that Guarino and Capra knew Herbert Sperling, were seen
11 with him on several occasions prior to March of 1973, going
12 back to 1972.

13 In 1973, he will testify that Sperling joined
14 up with Guarino and Capra in what the Government submits
15 is an on-going conspiracy, and --

16 THE COURT: Up in what way?

17 MR. FEFFER: Became a third partner in an on-
18 going conspiracy.

19 THE COURT: And not a new one?

20 MR. FEFFER: Our position, your Honor, is
21 that it was not a new one, that's correct, that Capra
22 and Guarino had an on-going conspiracy and that Sperling
23 became a member or partner in that conspiracy.

24 THE COURT: Well, then your claim about the
25 character of this alleged conspiracy, is it contended that

1 jkb-4
2 he is on the level at which you have placed Guarino and
3 Capra?

4 MR. FEFFER: Not quite, but just about. Just
5 about. The testimony will reflect that Sperling became
6 what he describes as a part ner, but I think inferences
7 could be drawn that he was not quite on their level.

8 THE COURT: Well, there does he fit, in your
9 theory?

10 MR. FEFFER: The testimony will show for example
11 that Guarino is the connection, that he has the ability
12 and he is the individual that brought the narcotics into
13 the country. And that Sperling, like Capra, was an individual
14 who took charge of the distribution end of it, so he had been
15 more on the level with Capra in that sense, in terms of
16 managing the business.

17 That is the fair inference that will be --

18 THE COURT: All right. Well, this will all have
19 to be sorted out and analyzed in the consideration of
20 motions and the consideration of instructions, but I think
21 on this kind of representation I will allow it. Yes,
22 Mr. Blackstone?

23 MR. BLACKSTONE: Mr. Feffer points out that Mr.
24 Conforti's testimony relates back to some time '71, events
25 commencing from that point. The testimony so far terminates

1 Mr. Harris' participation in any conspiracy in December
2 of 1970. There has been no testimony even implying or
3 suggesting that he had any participation in any activities
4 following 1970, the December date. Therefore all this
5 testimony, I think on the basis of what Mr. Feffer says,
6 would not -- is going to come in against Mr. Harris.
7

8 THE COURT: Well, it may or may not be useable
9 against Mr. Harris. I have been persuaded, I guess because
10 it is obviously correct, that Mr. Morris has established
11 his withdrawal, if he was ever in the conspiracy, by his
12 being arrested. Now withdrawal is a kind of event, a
13 kind of subject that has rules attached to it.
14

15 I think, so far as I remember, you are correct,
16 the evidence I have heard does end in '70 with Mr. Harris.
17 Is that right or wrong?

18 MR. FEFFER: That is correct, your Honor.

19 THE COURT: So there will be a problem, first, of
20 whether he withdrew, and second, if he did, what instructions
21 should be given to the jury about that.

22 And all of that we will take up in due course.

23 MR. FEITELL: Your Honor, I would like to join
24 in Mr. Slotnick's -- and point out with reference to the
25 3500 material that has been turned over to us that it appears

1
2 that the Sperling feature of this, with all of his people,
3 the names of which are strangers to this trial, long pre-
4 dated and existed independently from any of the facts or
5 circumstances that have been thus far described to the jury.
6

7 And more than that, an analysis of the 3500 material
8 shows utterly no reference to my client, and for that
9 reason I say this is particularly damaging to him since
10 it would involve a preexisting conspiracy, preexisting to
11 this one, wholly unrelated to him.

12 THE COURT: All right.

13 MR. FEFFER: Your Honor, just in answer to that,
14 for example, John Caruso, who was a defendant in this case,
15 will be mentioned by Mr. Conforti. Jack Spada, who is
16 a conspirator in this case will be referred to by Mr.
17 Conforti. And that is reflected in the 3500 material,
18 so I think it is unfair then for Mr. Feitell to characterize
19 that Conforti will be speaking about people who are strangers.
20 They are named either in the indictment as co-conspirators
21 and they have been since the beginning.

22 MR. FEITELL: There are lots of names in the
23 indictment, and the bill of particulars. I looked at the
24 record to see how various names merge as persons identified
25 with the factual flow, and the mere appearance of a name

jkb-7

in an indictment is meaningless and --

THE COURT: It is meaningless, but then it takes on some meaning when there is some evidence about it. And the Government is about to adduce some evidence it says. In any event, I am not going to rule this question on the basis of the 3500 material, which I have not seen, and with good luck I will never see. I am going to rule on the basis of the evidence that is laid before the jury, and I can't be certain how that is going to come out.

I have given you my best judgment. Now we are going to receive it.

Mr. Levenson?

MR. LEVENSON: Well, I, of course, am joining in the application of Mr. Slotnick with respect to my client. But with respect to the procedure to be followed here, whether or not the Court is to rule on this after Conforti testifies or before, I must suggest that in the event that he testifies, and it is determined that there is a Kotteakos problem here, where there is another totally different conspiracy, I think it may be irreparably prejudicial at that point to then instruct the jury. I was going to suggest that perhaps --

THE COURT: I think you are absolutely right,

going to rely in this ruling on the doctrine of laches any more than I am going to rely on the Uniform Commercial Code in the opinion denying the motion to suppress relating to the Toledo episode. That evens everything out.

Are we ready to proceed?

MR. FEFFER: I just want to get the copy.

THE COURT: All right, let's get the jury.

MR. FEFFER: Your Honor, I might add in that regard for the completeness of the record that we told defense counsel that Joseph Conforti was a witness pursuant to your Honor's instructions because he was in protective custody.

THE COURT: All right.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen. I am officially in charge of apologies. We have again had some legal discussions about this and that, but we are ready.

J O S E P H C O N F O R T I, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Conforti, I am going to ask you to keep

jkb

Conforti-direct

2400

your voice on a level where everyone in the courtroom
can hear you.

How old are you, Mr. Conforti?

A Twenty-six.

MR. SLOTHICK: I don't hear the witness, your
Honor.

THE COURT: We will see.

MR. FEPPER: We will see if we can hook the
microphone up.

Q Is that 26?

A Yes, sir.

Q Are you married?

A Yes, sir.

Q Do you have any children?

A Yes, sir.

Q How many?

A Two.

Q How old are they?

A Seventeen months and five months.

Q I am going to direct your attention to April 13,
April 14, 1973. Were you arrested at that time for a viola-
tion of the Federal narcotics laws?

A Yes, sir.

Q Were you named in an indictment charging Herbert

1
2 Sperling, yourself and others with a conspiracy to distribute
3 narcotics?

4 A Yes, sir.

5 Q Did you enter a guilty plea?

6 A Yes, sir.

7 Q Did you later testify against Sperling and
8 others in a trial last June?

9 A Yes, sir.

10 Q Have you been sentenced as yet on that charge?

11 A No, sir.

12 Q Do you know when you will be sentenced on that
13 charge?

14 A During this month, I think.

15 Q And have any promises been made to you by the
16 Government with respect to the sentence that you will receive?

17 A As far as that I am testifying and that the
18 Court will recognize that, towards the case.

19 Q Just to make your cooperation known to the
20 Judge, is that what you are saying?

21 A Yes.

22 Q Have you and your family been receiving money
23 from the Government?

24 A Yes, sir.

25 Q And for what period of time?

1 A I don't understand the question.

2 Q From when, for what period of time?

3 A From the time I was arrested up till now.

4 Q Would that be from April of 1973?

5 A Yes, sir.

6 Q How much money have you and your family received?

7 A \$815 a month.

8 Q Is it your understanding that this will continue
9 to be coming your way in the future?

10 A Till after I am sentenced.

11 Q At that time you will not longer be receiving
12 money?

13 A Yes, sir.

14 Q Were you employed at the time of your arrest?
15 Were you working?

16 A Yes.

17 Q And what were you working at?

18 A At, I was in partners with Mr. Sperling on a
19 pizza store in Bellmore.

20 Q How about in 1970, were you employed in 1970?

21 A Yes, sir.

22 Q And what was your job at that time?

23 A Cement worker.

Q And did you continue to work in that line during 1970?

A No, sir.

Q What happened?

A I got injured on the job.

Q And as a result of that injury, what happened?

A I sprained my back.

Q Did you spend time in the hospital for that?

A Yes, sir.

Q How long?

A About two months.

Q Now, did you receive compensation after that injury?

A Yes, sir.

Q Did you continue to receive compensation throughout '70, '71, '72?

A Yes, sir.

Q Now, did you go back to your job in 1970, after the injury?

A Yes, I tried, but I couldn't handle the heavy work.

Q In 1971 were you employed?

A Yes, sir.

Q As what?

1 A As owner of a gas station.

2 Q How long did you own the gas station?

3 A About a year and a half.

4 Q You mentioned a pizza shop. Can you tell the
5 Court and jury approximately when you became involved with
6 a pizza shop, approximately?

7 A Around August, September of '72.

8 Q Was anyone else partners with you or operating
9 the pizza shop with you?

10 A Herbert Sperling was my partner.

11 Q Now, when did you first meet Herbert Sperling?

12 A Around November of '71.

13 Q What was the nature of your relationship with
14 Sperling besides the pizza store?

15 A I was involved in mixing narcotics.

16 Q For whom?

17 A For Herbert Sperling.

18 Q Do you know Leo Guarino?

19 A Yes, sir.

20 Q Do you see him in this courtroom?

21 A Yes, sir.

22 Q Would you point him out, please?

23 A The gentleman with the blue suit.

24 Q Can you describe him further than that? Where
25

2 is he sitting?

3 A At the far end of the court, the far side of
4 the court.

5 Q What color hair does he have?

6 A Brown.

7 Q Would you point him out, please?

8 A Right there (indicating).

9 Q You will have to do better than that, Mr. Conforti.
10 Can you describe the tie that he has on?

11 A It is a blue tie with white design in it.

12 MR. PEPPER: Your Honor, may the record reflect
13 now that the defendant Guarino has been identified.

14 MR. MC ALEVY: I believe he said brown.

15 THE COURT: Wait just a second. The record won't
16 reflect that. You will have to let him identify him --

17 Q Will you go over and point Mr. Guarino out,
18 please.

19 A He has a blue tie with white --

20 THE COURT: No, go point him out if you know
21 who he is. Go to him and point him out.

22 THE WITNESS: Right there next --

23 THE COURT: You may step off the stand.

24 THE WITNESS: I have got this thing on.

25 Q Do you know John Capra?

THE COURT: No.

MR. FEFFER: I would have him do it the same time.

THE COURT: All right.

Q Do you know John Capra?

A Yes, sir.

Q Do you see Mr. Capra in this courtroom? Do you see Mr. Capra in this courtroom?

A Right there (indicating).

Q Will you come off the stand --

MR. MC ALEVY: Excuse me, your Honor --

THE COURT: What is the answer to the question? Do you or don't you see Mr. Capra?

THE WITNESS: Yes, sir.

THE COURT: All right, well you will have to answer so we will know. Where is he?

THE WITNESS: Right there (indicating).

THE COURT: Now, are you going to ask him to identify any one else?

MR. FEFFER: That is it, your Honor.

THE COURT: All right, then I think the appropriate course, unless there is an objection, is to have him step off the stand and point to the people he says are those people.

2 Q Let me try to do this first, your Honor. How
3 many seats from the end of the table is Mr. Capra sitting,
4 from the end of that table?

5 A He's the third person in, he's between the person
6 with the beard and the glasses.

7 Q How many seats from the end of the table is Mr.
8 Guarino?

9 A He's right at the end of the table, he's
10 between the gentleman with the --

11 MR. SLOTNICK: I would object to Mr. Feffer
12 pointing when he asked the question. I have observed that.

13 THE COURT: I haven't seen him point at an individ-
14 ual.

15 MR. SLOTNICK: I have.

16 MR. MC ALEVY: And I have, too.

17 MR. SLOTNICK: I have, your Honor, and I object
18 to it.

19 THE COURT: The jury will have to make a judgment
20 about that.

21 Now where do you say is Mr. Guarino?

22 THE WITNESS: The gentleman with the white hair,
23 on the corner.

24 THE COURT: Do you see this table, the man in
25

1
2 the blue coat?

3 THE WITNESS: Yes.

4 THE COURT: Counting to the right from him, where
5 do you say is Mr. Guarino?

6 THE WITNESS: The eighth person.

7 MR. PEPPER: May the record reflect now the
8 identification of Guarino.

9 THE COURT: Well, the record reflects what it
10 reflects, and the jury can count up to eight and
11 you may proceed.

12 Q What color is the hair of Mr. Guarino, please?

13 A White.

14 Q So you were mistaken when you said brown?

15 A I never mentioned brown.

16 Y Now, approximately when did you first see Guarino
17 and Capra, for the first time?

18 A Around the fall of '72.

19 Q Where did you first see these two men?

20 A At the neighborhood, on 54th Street and Seventh
21 Avenue.

22 Q I am going to direct your attention now to the
23 middle of March 1973. Did you have an occasion to go to the
24 area that you called the neighborhood, 54th and Seventh
25 Avenue, and specifically to the Stage Delicatessen at that

1
2 time?

3 A Yes, sir.

4 Q And would you tell the Court and jury who was
5 present when you arrived?

6 A When I arrived in the restaurant, there was
7 Herbert Sparling and a fellow sitting on the opposite chair,
8 later on I knew him as Johnny Hooks.

9 MR. SLOTNICK: Your Honor, I can't hear.

10 THE COURT: Would you put the microphone back
11 on.

12 Q Now, did you have a conversation at that time --

13 THE COURT: Wait, I don't know if he finished
14 his answer to the question. And if he did, I believe Mr.
15 Slotnick said he didn't hear him.

16 So let's read the question and answer and see
17 where we are.

18 (Record read.)

19 Q Is that Johnny Hooks you say?

20 A I made a mistake.

21 Q What w-as that?

22 A Johnny Hawkes.

23 Q Were you introduced to this individual Johnny
24 Hawkes at that time?
25

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A Yes, sir.

Q Was there a conversation that took place at the table?

A Yes, sir.

Q Would you tell the Court and jury what that conversation was?

A There was a conversation about me working with Johnny Hawkes.

Q Tell the Court and jury who said what to you.

A Herbert Sperling says, introduced me to John and told me that I'd be working with him from now on.

Q Did you later learn the full name of this individual John Hawkes?

A Yes.

MR. SLOTNICK: Objection, your Honor -- all right, I withdraw it.

Q What is that?

MR. SLOTNICK: I object, where, when and from whom?

THE COURT: Overruled.

Q What is his full name?

A John Caruso.

Q After this conversation with Sperling what took place?

A Herbie left the restaurant.

Q Did you see where he went?

A Yes, sir.

Q Where did he go?

A He went right around the corner to join up with Leo and Hooks.

Q When you refer to Hooks you refer to the individual you saw in the courtroom?

A Yes, sir.

Q What did you then do?

A I stood behind them in the restaurant talking to

John.

Q Will you tell the Court and jury what John said to you and what you said to him?

MR. SLOWNICK: I object at this point, nothing to do with this case and I believe there is an indication that John is John Caruso and I move that any conversation be stricken.

MR. MC ALLEVY: I join in that.

MR. FEITELL: I move that the last names of the individuals be utilized.

THE COURT: I will certainly grant that. Let us identify John when he is referred to by his last name.

I take it your position is you will show the requisite connections?

MR. PEPPER: John Caruso is a defendant--

MR. SLOWNICK: Objection, your Honor.

MR. PEPPER: Yes, and the conversation is relevant, your Honor.

THE COURT: All right, the other objections are overruled.

Q Can you tell the Court and jury the conversation you had with this individual you called John Caruso?

A John explained to me that he was working with Leo and Hooks and he does the same thing as I did with

Herbie and later on that he would be moving out of the apartment, some stuff out of the apartment in Harlem. I was later to make contact with him so I could receive it.

Q Did you say anything to him during the course of --

MR. LEVENSON: Your Honor, I would like to have a continuing objection with respect to all of Mr. Conforti's testimony with respect to my client based on the previous colloquy.

THE COURT: All right. We have discussed that. The same thing for you, Mr. Blackstone.

MR. FEITELL: Your Honor, I join in that application.

MR. SLOTNICK: I join in it.

Q Did you say anything at that point to John Caruso?

A I asked if he wanted me to help him move the stuff out of the apartment and he says no. He said if I go down with him to the apartment the people would notice a strange face so it is better that he go alone.

Q After the conversation with John Caruso in the Stage Delicatessen what did you do and Caruso do?

A We both walked out of the Stage Restaurant and John Caruso walked in the cigar store talking with Herbie,

Leo and Hooks.

Q Where is the cigar store in relation to the delicatessen you just described?

A About two stores over.

Q What did you say at that point?

A I started to walk with Jack.

Q Do you know his full name?

A Jack Spada.

Q Who is Jack Spada?

A He worked with me as far as, with me all the time I mixed narcotics.

Q Did you have a conversation with Jack Spada?

A Yes, sir.

Q Will you tell the Court and jury what you said to him and what he said to you?

A I asked Jack who was this fellow John because I was curious, he was new and I never seen him before.

He explained to me he works with Hooks and Leo and he does the same thing that I do and--

Q Mix narcotics?

A Pardon?

Q Mixing narcotics?

A Yes, sir.

Q Go ahead.

A That I will be contacting with him and just listen to him and everything will be all right.

Q Did he say anything else to you at that point in time?

A Yes.

Q What did he say to you?

A I asked what has Leo and Hooks got to do with this and I said who are these guys. So he told me that John Hooks --

MR. SLOTNICK: Objection, your Honor. I move that that be stricken as hearsay, not a statement in furtherance of anything.

MR. PEPPER: Jack Spada is a co-conspirator.

THE COURT: I know, but that doesn't make everything admissible. You'd better come to the side bar.

(At the side bar.)

THE COURT: I don't think conclusory things about who he is, he is a big narcotics dealer, and that kind of thing are admissible.

Now, I think in order to be within the rule you got to frame your questions in terms of what is allowable, that is, things people do.

If you allege these are conversations that are in furtherance of the conspiracy, you have got to have that

shown by your questions. Broad questions like who is he I am not going to allow.

MR. FEFFER: The question was what he said.

THE COURT: What was to be the answer?

MR. FEFFER: The answer is going to be that Leo Guarino was the individual who was bringing the stuff in, in the country and John Capra like Herbie Sperling was the individual distributing narcotics.

THE COURT: How do you claim that as in furtherance of the conspiracy?

MR. FEFFER: Because this individual at this time was uncertain as to what was happening as to his part in the whole framework and he was seeking this information to reassure himself in his own mind to become a member and participate actively. That it was only after he was reassured --

THE COURT: I understand, that is plausible.

MR. SLOTNICK: Could we have Mr. Feffer's speculation that he was unsure of his part? He testified about mixing narcotics in this case and he was not going to stop mixing narcotics and any indication of his being unsure, or we get some historical testimony as who are those guys. That is not in furtherance of a conspiracy.

THE COURT: You can go into that but I think it is

1
2 an arguable position if somebody in an enterprise seeks
3 enlightenment of who somebody else is, his getting it can
4 be in furtherance of the enterprise. I myself ask about
5 certain people, who they are and I don't do it out of
6 idle curiosity. It is an arguable question but now you
7 have enough so that on the threshold question of
8 admissibility I am going to allow it.
9

10 MR. BLACKSTONE: I would simply say that in May 4
11 of 1973 that the Court of Appeals decided in US against
12 Puco, which raised the additional criterion for
13 determining whether declarations are admissible as to the
14 question of reliability under the circumstances.

15 Now, I think this situation here is somewhat
16 different from an ongoing transaction where a person
17 obviously has personal knowledge.

18 Here a man is being asked a question what did he
19 have to do with it and there is no reliability factor, the
20 factor is not great because there is no showing that the
21 person from whom he received the information was intimately
22 involved with these events.

23 I think you are one step removed from the usual
24 rule where acts in furtherance, declarations in furtherance
25 of a conspiracy are admissible. You fall within the
problem of the Puco decision.

1
2
3 MR. SLOTHICK: Your Honor, may I just state for
4 the record, and I am glad Mr. Blackstone brought this up,
5 in reading Puco and Judge Feinberg's decision, in his
6 discussion of Dutton where all this emanates from, he
7 does indicate that the reason they allowed the Puco
8 conviction to stand was when Puco or the other individual
9 pointed out Mr. Puco to the agents, there were agents and
10 there was sufficient corroboration. It just wasn't a one-
11 sided statement.

2/
12 There was corroboration and he allowed it based
13 upon that thin line of reliability and it was thoroughly
14 discussed by the Court of Appeals. I even think they
15 talked about it en banc.

16 THE COURT: Mr. Feffer?

17 MR. FEFFER: Your Honor, the only thing I can say
18 is that Puco was modified by a rehearing and I don't have the
19 decision before me and I cannot run down the different
20 criterion. There were three different tests and
21 unfortunately I don't have the decision here.

22 THE COURT: What about Mr. Blackstone's point
23 as an original proposition?

24 I don't have Puco before me either or its
25 modification if that is relevant. Why do you say this is
reliable evidence?

MR. FEFFER: There is no foundation to show up to this point except he says that Spada was involved actively in the sale of narcotics and he was also going to be a part of this new enterprise.

THE COURT: Do you expect to have any other evidence?

MR. FEFFER: Very definitely.

THE COURT: What will it show?

MR. FEFFER: John Caruso and Conforti on three separate occasions after the partnership was formed went to various hotels on Long Island and mixed large portions of pure heroin for Capra, Guarino and Sperling.

MR. SLOTNICK: Testimony brought out by Mr. Conforti?

MR. FEFFER: Sure.

MR. FIELD: We will have corroboration of that.

THE COURT: Any corroboration of it?

MR. FEFFER: The hotel registrations, Spada in conversation with Leo Guarino.

THE COURT: All right, I will allow it.

(In open court.)

BY MR. FEFFER:

Q Mr. Conforti, you indicated Jack Spada said something else to you in front of the delicatessen at that

particular time. Will you tell the Court and jury what he said to you?

A He explained to me that Leo was the heavy man, he made the connections in bringing in narcotics and Hooks was like a manager, like distributing.

Q Now, following this conversation what did you do?

A I walked into the cigar store.

Q Who was in the cigar store when you arrived?

A There was Herbie, Leo, Hooks and John.

Q What took place when you arrived at the cigar store?

A When I walked in Leo was asking Herbie make sure this kid writes his number, relating to that I had to write my number on a piece of paper and give it to John Caruso.

MR. SLOTNICK: I object to his interpretation of what that meant.

Just tell us what the conversation is.

THE COURT: Let me hear the testimony.

(Record read.)

THE COURT: I will allow it.

Q What did you do after that conversation?

A I went to the counter and asked for a pencil and piece of paper.

Q What happened then?

A I wrote my telephone number down and gave it to Herbie and ---

Q This is on a piece of paper?

A On a carton of Winston cigarettes, and gave it to Herbie and he turned around and gave it to John Caruso.

Q Was there any other conversation?

A When we walked out of the store John turned around and asked John Hooks do you want me to give him everything in the apartment? So John turned around and said no, just the mix and stuff that he needs.

Q Did you eventually get, receive everything from the apartment?

A No, sir.

Q Did John Capra say anything to you as you were leaving?

A He said, "Joe, don't worry, he is with us, just listen to him and everything is going to be all right and just make sure you are not followed."

Q I direct your attention to the following day, also sometime in the middle of March, 1973. Did you receive a telephone call on that day from John Caruso?

A Yes, sir.

Q What did he say to you?

A For me to meet him on 92nd and Second Avenue.

Q Did you then go to that location?

A Yes, sir.

Q Did you meet Caruso?

A Yes, sir.

Q What took place?

A He told me he is going to start moving the stuff out of the apartment and for me to meet him about an hour and a half and asked me if I was familiar with the Bronx and we set up a meeting.

Q Where were you supposed to meet him at?

A At Korvettes Shopping Center, Bruckner Blvd.

Q Did you say anything to him at this point?

A I asked again if he wanted me to help him move the stuff out of the apartment. He told me no, because he didn't want me around the area and that I was supposed to meet him in an hour and a half.

Q Did you meet him in an hour and a half?

A Yes.

Q Where?

A At the shopping center.

Q What took place when you met with Caruso at the shopping center?

A He told me to go to the coffee shop, have a cup of coffee and he would be right back. So he took my car and

he returned about 10 or 15 minutes later, telling me all the stuff was in the suitcases in my trunk, for me to put it in a safe place.

Q After this, what happened?

A We drove back to his car, I left him off and went home.

Q What did you do when you reached your home?

A I put the stuff in the basement.

Q Can you describe what you took out of the trunk and put in the basement?

A Two suitcases and a box.

Q Can you describe what was in the two suitcases and the box?

A About 70 pounds of lactose and mannite.

Q What is lactose and mannite used for?

A For mixing or cutting heroin.

Q What else was in the suitcase?

A There was scales, masks, all the stuff I would need.

Q For what?

A To mix narcotics.

Q The following day did you have occasion to go to Herbert Sparling's house?

A Yes.

Q Where does Mr. Sparling live?

A 2868 Lee Place in Palmdale.

Q Long Island?

A Yes, sir.

Q Did you have a conversation with Sperling at that time?

A Yes, sir.

Q What did you say to him and what did he say to you?

A I asked him if it was all right if I put Johnny Hooks and Leo's stuff together with his.

Q Stuff, what were you referring to?

A As far as the mannite and mixture.

Q Go ahead.

A He says "I don't see why not, we are all one big family but you'd better wait for a little while until I ask to make sure."

Q I direct your attention to the following day. Did you have occasion to see Sperling then?

A Yes.

Q Where did you see him?

A On 54th and Seventh Avenue.

Q What took place when you arrived?

A I arrived and I saw Jack on the corner.

Q Jack Spada?

A Yes, sir.

Q Go ahead.

A I asked Jack where is Herbie. He told me he was up in the apartment and I asked who was with him. He said Hooks and Leo.

Q Where is this apartment located?

A Right on 54th Street between Seventh and Broadway.

Q Who was in the apartment when you arrived?

A Herbie, Leo, Hooks and a girl.

Q What took place when you arrived?

A I was going to ask Herbie again about putting the stuff together but I didn't because there was the girl and he told me to wait five minutes because everybody was going downstairs.

Q What did you see when you arrived in the apartment?

A Herbie gave Johnny Hooks and Leo some money.

Q Do you know how thick each stack of money was that he handed over?

MR. SLOTHICK: Objection, your Honor.

THE COURT: sustained.

Q Do you know the denominations of the bills they handed over?

A 50's and 100's.

Q Do you know how thick each stack was?

MR. SLOTHICK: Objection, your Honor.

THE COURT: Overruled.

Q Approximately how thick was it?

A About an inch.

Q What, if anything, did Herbie tell you at this point?

A They were going to leave the apartment and Herbie told me to stay back five minutes, wait until they got down so Herbie left and Hooks left first. I waited five minutes.

Q When you walked downstairs who was present?

A Herbie, Leo and Hooks.

Q Was there any conversation that took place at that point?

A Yes, I asked him again.

Q Who?

A Herbie, about putting the stuff together.

Q This would be the mix you are talking about?

A Yes.

Q What did Mr. Sperling say to you or say?

A We were walking out in the street and he asked Hooks "I am going to put all the stuff together." And he said "All right, you can put it together." And Herbie turned around and told me to put it together.

I asked Herbie about they have some scales and some stuff that I didn't need, is it all right to throw it out. He asked John and he said use your own judgment.

Q These are the scales you received from Caruso?

A Yes, sir.

Q Did Capra, Books say anything to you at this point?

A They were telling Herbie for me to go home because they didn't want me to get burned, meaning that if somebody was watching them they didn't want them to know that I was mixing the heroin.

MR. SLOTNICK: Objection, your Honor.

THE COURT: I will allow it.

Q Did you go home at that point?

A Yes, sir.

Q What did you do when you arrived at your house?

A I threw all the equipment that I didn't need out and kept the stuff and mixed it all together.

Q The following day, which would be about the middle of March or end of March, did you have occasion to return to the location of 54th and Seventh Avenue, in that vicinity?

A I received a call from Herbie and he told me to come down around 2 o'clock. So I arrived, parked my car on Broadway and 54th and walked one block and walked in the cigar

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2 store.

3 Q Who was present at the cigar store when you
4 arrived?

5 A Herbie, Leo and Hooks.

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Q Were they in conversation when you arrived?

A Yes.

Q Did you overhear any portion of that conversation?

A Leo was telling Herbie, "Well, we need the money to get this deal going," or connection that they were involved with, so Herbert turned around to me, he says, "Joey, do me a favor, run to my house, go to my house, and go to my wife's closet and pick up 30,000 and there was a bag there containing 40, just leave ten behind and come right back down."

Q What did you do at that point?

A I left, I went to Herbie's house.

Q And this is in Long Island, Bellmore?

A Yes, sir.

Q What took place when you arrived?

A The maid Mary let me in. I told her I had to go to Herbie's bedroom, so she told me there was money there.

MR. SLOTNICK: Objection to any conversation between the maid and this gentleman.

THE COURT: All right. Let's exclude that.

Q Just what did you do, Mr. Conforti, when you arrived at the house. Disregard any conversation that she had with you.

1 A I walked in on Herbie's house, went upstairs
2 into his wife's closet. I opened the bag and there was
3 four bundles of money, so I took three out and I counted one,
4 to make sure it was ten thousand.
5

6 Q In each bundle?

7 A Yes, sir.

8 Q Go ahead.

9 A I asked Mary to give me a bag so I could put the
10 money in, she went downstairs, got me a bag.

11 Q What did you do with the \$30,000?

12 A I went back to 54th Street and --

13 Q Who was there when you arrived?

14 A Herbie, Leo and Hooks.

15 Q What took place when you arrived?

16 A When I arrived I had the bag in my hand, so Leo
17 turned around, he says, "If the kid's going to carry money,
18 make sure he don't carry it in the open, make sure he
19 puts it in his pocket or underneath his jacket."

20 Q Now, I am going to direct your attention to the
21 7th of April 1973. Would you tell the Court and jury what
22 you did on that day?

23 A The night before, John Caruso calls me up, tells
24 me to stick by the phone, meaning for me to stay at home,
25 so the next day on the 7th Herbie calls me up, tells me to

1 jkb
2 come up with the equipment. I would leave my house about
3 ten o'clock.

4 Q Did you have anything with you when you left the
5 house?

6 A Yes.

7 Q What did you have with you?

8 A I had a green suitcase, mixing paraphernalia,
9 and testing equipment.

10 Q Where did you go?

11 A I went up to the Bar Harbor Motel.

12 Q Do you know where the Bar Harbor Motel is located,
13 as to what county?

14 A Massapequa, Long Island.

15 Q Long Island. What took place when you got to the
16 hotel?

17 A I registered in the hotel, I leave the suitcase
18 in the hotel, and I go to Herbie's house, tell him which
19 hotel I was in, and the room number.

20 Q How did you register at the Bar Harbor Motel,
21 what name?

22 A In my own name.

23 Q I am going to show you Government Exhibit 80 for
24 identification and ask you to look at it and to identify
25 it, if you can, please.

1 A Yes, it is my handwriting.

2 Q What is it?

3 A The register from the hotel.

4 Q This is the receipt that you received from the
5 hotel?

6 A Yes.

7 MR. FEEFFER: Your Honor, Government offers 80
8 in evidence.

9 MR. SLOTNICK: I would object to it, your Honor,
10 as being completely irrelevant to my client. The second
11 objection is that there is a little extra added attached
12 piece of paper which I don't think is relevant to this case.
13 I think the Government knows what I am talking about.

14 MR. FEEFFER: Your Honor, I can remove the item
15 that he is referring to.

16 MR. SLOTNICK: I would appreciate that.

17 THE COURT: Okay. Objection overruled. It
18 will be received.

19 (Government Exhibit 80 was received in
20 evidence.)

21 MR. FELD: May we pass this to the jury, your
22 Honor?

23 THE COURT: Yes.

24 (Handed to the jury.)
25

Q After you registered in the Bar Harbor Motel on the 7th, you testified you went to Sperling's house?

A Yes.

Q Is that correct? What took place when you arrived at Sperling's house?

A I arrived at Herbie's house and gave him the information on the hotel and the room number I was in.

Q What if anything did he say to you at that time?

A He told me things are going to be "You have to wait, so take in a movie and waste some time, and things are going to be looking up."

Q Anything else?

A And that I'd be --

MR. SLOTNICK: Your Honor, I am sorry I didn't hear the last statement that this witness said.

MR. FEFFER: Things would be looking up.

Q Was there anything else said by Mr. Sperling at this time?

A Things are going to be busy from now on because I'm partners now with Leo and Hooks; he told me I'd be earning anywhere between 80 to 85,000 a year.

Q Prior to that time, how much money did you receive from Herbert Sperling for mixing narcotics?

A About four thousand.

Q Total?

A Yes.

Q What did you do after that time?

A I left the house, Herbie's house, I went back to the hotel. I waited for about four or five hours.

Q What happened next?

A John Caruso shows up.

Q Did he have anything with him?

A Yes, sir.

Q What did he have with him?

A He had an A & P , a brown bag, and when he dumped it on the table there was about eight kilos of pure heroin.

MR. SLOTNICK: I object to the characterization of the substance, your Honor.

MR. FEITELL: Or its purity.

THE COURT: Yes, I will sustain that as of this time. I will strike out the reference to what the substance was.

You may attempt that in some other way, Mr. Feffer.

MR. FEFFER: Fine, your Honor.

Q What took place when Caruso arrived?

A He told me we have to wait until, we are going to test it, but we have to wait until Jack shows up. He

showed about 20 minutes later.

Q And what took place when Jack arrived?

A When Jack arrived we started opening up the half kilo bags.

Q What did you do at that point in time?

A We were preparing to test the heroin.

Q Can you tell the Court and jury the procedure that you utilized on that occasion to test the heroin?

A We take a little stove and you have a pyrex jar and you put mineral oil in it, and you get a cardboard box, a piece of cardboard and you lay it on top of the pyrex jar, you put three holes in it, in the middle you put a thermometer, at the two ends you have test tubes, and we would take a little sample from each bag and put it in the test tubes, and as the heat, as the oil gets hot the temperature starts rising, and when it reaches about 230, 240, the heroin, the white substance in it will start turning brown, and that's when you know it's pure heroin.

Q Go ahead.

A So we made that test, and Jack turned around and he made an acid test, took an ashtray and took samples of the packages, put it in an ashtray, and dropped some acid on top of it, and when the heroin turns olive, dark olive green it is pure. The darker the green gets the purer the

2 purer the heroin.

3 Q And did the substance turn dark green?

4 A Yes, sir.

5 Q When you refer to Jack, are you talking about
6 Jack Spada?

7 A Yes, sir.

8 Q After testing the pure heroin, what happened?

9 A John wanted to call up Johnny Hooks on the
10 phone.

11 MR. SLOTNICK: Your Honor, I object, unless
12 he can verify who the phone call was made to, by whom.

13 Q What did John tell you, say to you?

14 THE COURT: By "John" you now mean John Caruso?

15 Q John Caruso. What did John Caruso say to you
16 at that time?

17 A After the test was made, John turned around
18 and told, "Well, I got to call up Hooks, and tell him every-
19 thing is all right."

20 So I told him, "Don't use the phone here."

21 So Jack turned around and said, "Well, I've got to
22 call up Herbie and tell him that everything is all right."

23 So Jack went out of the hotel room to make the
24 call. So John turned around and said, "Well" --
25

MR. SLOTNICK: Objection, your Honor.

Q What did John do?

MR. SLOTNICK: Ask that that be stricken. He made a call.

MR. PEPPER: He didn't say he made a call.

THE COURT: Objection overruled.

Q Go ahead.

A So John turned around and says, "Well, if you tell Herbit, you -- eventually Hooks will know that everything's all right."

So Jack left to make the phone call.

Q And did he return?

A Yes.

Q When he returned what did you, John Caruso and Jack Spada then do?

A We mixed two and a half kilos of pure heroin.

Q And what did you end up with?

A 12 to 14-1/2 kilos of mix.

Q Now, can you tell the Court and jury how you mixed the heroin, the pure heroin on that occasion?

A We laid two manila wrapping papers on the floor, you roll them out and you put so many pounds of manite or milk sugar on the floor and you open one bag of heroin.

and you lay it on top, and you get two pounds more of manite and you lay it on top of the heroin, and you put another half kilo of pure heroin on top of it, until everything is altogether, and you start mixing it with the screens.

Q And after you mixed it, what happened, what did you do?

A Well, I start putting the heroin in plastic bags and John will start weighing them by the scale.

Q How much did you put in each plastic bag?

A 17-1/2 ounces.

Q Go ahead.

A And he'll make sure the weight is right, and when that is done, I start sealing the bags.

Q What did you seal the bags in?

A With a heat sealer.

Q How many times did you cut or dilute the pure heroin?

A About five times.

Q Was it possible to cut this heroin further?

A Yes.

Q Do you know how many times further it could be cut, approximately?

A About another three, four times.

Q Now, after the heroin was placed in the plastic bags and sealed, what took place?

A Well, John would tell me to put so many half kilos in one bag, and Jack would tell me another, to put X amount of half kilos in another, so, to make their deliveries and I would stay behind in the hotel room and clean the hotel room and they would leave.

Q Now, this mixing took place on the floor of this hotel room, is that correct?

A Yes, sir.

Q And did they tell you where they were going?

A No, sir.

Q How did you clean up the room?

A I just wipe it down with a damp cloth.

Q At that point did you still have the equipment with you?

A Yes, sir.

Q Mr. Conforti, I am going to direct your attention to April 10, 1973. Did you receive a telephone call from Herbert Sperling on that date?

A Yes, sir.

Q And what did he say to you?

A Well, previous from the night before, John calls me, tells me to stick around, to make sure I stay

home for the next day. The next morning Herbert calls me, tells me --

Q This is the 10th?

A Yes.

Q Go ahead.

A Herbie calls me, tells me to come out with the equipment and --

Q What did you do?

A So before I go to his house, I would register in the hotel, and leave the suitcase in the hotel.

Q Which motel did you go to?

A To The Gateway.

Q And where is The Gateway Motel located?

A Merrick, Long Island.

Q Did you register in your own name at the Gateway Motel?

A Yes, sir.

Q And you left the equipment and the mix there, is that correct?

A Yes, sir.

Q I ask you to look at Government Exhibit 81 for identification and tell the Court and jury what it is, if you can.

A It is a registration card.

2 Q For which hotel?

3 A From The Gateway.

4 Q For the 10th of April 1973?

5 A Yes, sir.

6 Q And it is filled out in your handwriting?

7 A Yes, sir.

8 MR. PEPPER: Government offers 81, your Honor.

9 MR. SLOTNICK: Objection to it, your Honor, as
10 being completely irrelevant to my client.

11 THE COURT: Overruled. We will receive it.

12 (Government Exhibit 81 was received in
13 evidence.)

14 MR. FELD: May we pass this to the jury?

15 THE COURT: Yes.

16 (Handed to the jury.)

17 Q Now, Mr. Conforti, after leaving the Gateway, on
18 the 10th, where did you go?

19 A I went to Herbie's house.

20 Q And who was present when you arrived at Sperling's
21 house?

22 A John Caruso.

23 Q And who else?

24 A Herbie.
25

Q What took place when you arrived?

A When I arrived, Herbie's wife left me in. I asked, "Where's Herbie?"

She said, "Upstairs, in one of the kid's bedroom." So I went upstairs and they were watching the baseball game. And Herbie asked me did I get the hotel room? I told him yes, I did, and I gave him the information, which room number and the hotel I was in. So Caruso turned around, asked Herbie if I was on the expense account, so Herbie says, "Yeah. Why?"

"You want me to buy some flight bags."

So Herbie says, "Yes, anything you need, the kid will get. Don't worry about the money."

So John told me to get twoflight bags that he needed.

Q So where did you go at that point?

A I went to the Robin Hood Department Store and I bought two flight bags.

Q Where is Robin Hood's Department Store?

A On Sunrise Highway.

Q Long Island?

A Yes, sir.

Q After purchasing the two flight bags what did you do?

1 A I went back to the hotel and waited.

2 Q And what took place next?

3 A About four hours, Caruso and Jack arrived.

4 Q What took place when they arrived?

5 A They had 2-1/2 kilos of pure heroin that I
6 tested from the time before.

7 MR. SLOTNICK: Objection, your Honor.

8 THE COURT: Pardon?

9 MR. SLOTNICK: Objection to the phraseology of
10 the substance.

11 MR. FEFFER: Your Honor, I think this witness
12 has clearly demonstrated his ability to --

13 THE COURT: Wait. I still think you need it
14 connected up. I am going to sustain the objection. They
15 arrived with something.

16 MR. FEFFER: Yes.

17 THE COURT: All right.

18 Q How did you recognize the 2-1/2 kilos of pure
19 heroin?

20 MR. SLOTNICK: Objection, your Honor.

21 THE COURT: Yes, that is sustained.

22 MR. FEFFER: All right.

23 Q You testified --
24
25

THE COURT: Don't tell him what he testified.
You'd better ask him another question.

Q What did they have with them when they arrived,
Mr. Conforti?

A They had three bags of, to me was pure heroin
because --

MR. SLOTNICK: Objection, your Honor.

THE COURT: They had three bags. I will strike
the rest. And you may proceed to ask him his observation
or his knowledge in some other way.

Q What did you observe when they arrived, on these
three bags that they had?

A It was the same three bags I tested the time
before because there was a tape that I put on the bags,
after I tested them.

Q Go ahead. What took place then?

A We mixed the heroin.

Q And did you utilize basically the same procedure
as the time before?

A Yes, sir.

Q And after you mixed the heroin, what did you do?

A I would stay behind in the hotel and they would
leave.

Q Now what did they do with the flight bags?

2 A See, Jack had to go, he says -- they were in
3 a rush that night, and Jack had to meet one of the customers
4 in Harlem, so he was telling me, "Hurry up, hurry up." So
5 we all mixed together to make the mix fast, and Jack put
6 I think about eight bags, half kilos, in one flight bag and
7 John put the rest in another.

8 Q So from the 2-1/2 kilos that were brought in the
9 room how many bags or half kilos did you end up with?

10 A About 12 to 14-1/2 kilos.

11 Q And after they left, what did you do?

12 A I stood behind, cleaned up the hotel room, and
13 I would leave.

14 Q And what did John CARUSO do?

15 A He left with Jack.

16 Q And did he have a flight bag with him?

17 A Yes, sir.

18 Q What was in his flight bag?

19 A The mixed narcotics.

20 Q I am going to direct your attention to Friday,
21 April 13, 1973. Did you receive a telephone call from
22 Herbert Sperling on that date?

23 A Yes, sir.

24 Q And what did he say to you?

25 A Well, I always receive a call from the night

before from John.

Q Go ahead.

A He says, "Well, I think something's going to come up tomorrow, but just stick around in case."

And the next day Herbie calls, he says, "Bring the stuff with you."

Q This is Friday the 13th, right?

A Yes, sir.

Q Go ahead.

A So I didn't register in the hotel first. I went from my house directly to his house.

Q Who was present when you arrived at Sperling's house?

A Leo.

Q And did you overhear conversation between Guarino and Sperling at that time or a portion of the conversation?

A He said, "Things are looking up, we're going to have a good year," something about a connection being made, and that when I walked towards him, they broke up.

Q And what happened then, what did you say to them?

A I told Herbie that I didn't get the hotel, but he was so involved with the conversation --

MR.SLOTNICK: Objection.

Q What did you tell Sperling?

2 A I told him, "I'll be right back."

3 Q What did you do?

4 A I turned around, left, I got in my car, I drove
5 off.

6 Q What happened at that point?

7 A Well, I was going to go and register in the
8 hotel, get a hotel room. About three blocks away, I look
9 in my mirror and there's Leo in his car, and Herbie with him.

10 Q What kind of car did they have?

11 A A green Lincoln.

12 Q Go ahead.

13 A So Herbit gets out of the passenger side and
14 asks me, "Where are you going? Did you get the room? You
15 didn't leave me the information."

16 I said, "Well, I was trying to tell you before,
17 I didn't get the hotel room. I'm on my way now."

18 So Herbie looked at Leo and they laughed.

19 Q Then what did you do?

20 A So they got in their car, I went back in my car
21 and I went to register in the hotel.

22 Q Which motel?

23 A Bar Harbor.

24 Q The same one that you had been to on the 7th of
25 April, is that correct?

1 A Yes, sir.

2 Q And what did you do at the motel?

3 A I registered in the hotel, I left the stuff in
4 the room, the suitcase.

5 Q How did you register?

6 A Under my own name.

7 Q Mr. Conforti, I am going to show you 82 for
8 identification and ask you to look at it and to identify
9 it if you can.
10

11 A Yes, sir.

12 Q What is it?

13 A Registration from the Bar Harbor Hotel.

14 Q Is it in your handwriting?

15 A Yes, sir.

16 Q Is it for the 13th of April 1973?

17 A Yes, sir.

18 MR. JEFFER: Your Honor, the Government offers
19 82.
20

21 MR. SLOTWICK: The same objection to this, your
22 Honor. It is irrelevant to my client.

23 THE COURT: Overruled.

24 (Government Exhibit 82 was received in
25 evidence.)

MR. FELD: May we pass it to the jury?

THE COURT: Yes.

(Handed to the jury.)

Q Now, Mr. Conforti, what happened at the Bar Harbor Hotel?

A After I left Herbie's house, I went to the hotel and I waited. It took longer than usual. I was there for about maybe five, six hours. And I kept on looking out of the hotel room to see if I saw his car.

Q Whose car?

A Caruso's car.

Q Go ahead.

A So I went back in the hotel room and I was watching TV, and it was about, it was right after Sanford & Son, it was about twenty-five to 9:00 that I went outside, I went down to the, there is a Howard Johnson's there, and I went to get, I was going to get some coffee, but on my way down John arrived.

Q John Caruso?

A Yes.

Q Go ahead.

A He says, "Where are you going?" I said, "I'm going to get some coffee."

So we both went in together to get coffee. He says, "Wait a minute."

He says, "Joey, wait a minute, I've got to call up Hooks. "

I said, "For what?" He says -- he didn't answer me. He says, "I just got to make a phone call."

So I waited on the side and he went and made a phone call. He was on the phone about a minute, two minutes. Then he came -- then we left the restaurant, then we went back into the hotel room.

Q Did John Caruso have anything with him at this time?

A Yes.

Q What did he have with him?

A Three bags of heroin.

Q Do you know how many kilos?

A I think 1-1/2, two kilos.

Q Now, what did you do at that time?

A We would mix the heroin.

Q And did you follow the same procedure as before?

A Yes, sir.

Q And following the mixture of the heroin, what took place?

A He would tell me, in other words, he had small brown bags, and out of the 12 to 14-1/2 kilos, he'd tell me to put like three in one bag, one in another, in other words

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for his customers, that he would just hand them out right away.

Q Then what took place?

A Then he would put that all in one big brown bag and he would leave.

Q And what did you do after he left?

A I would stay behind, clean up the hotel room.

Q Did you go home following that, to your house?

A Yes, sir.

Q And where was your house at that time, Mr. Conforti?

A In the Bronx.

Q Now, were you arrested in the early morning hours of the 14th?

A Yes, sir.

Q And where was the equipment and the mix and the paraphernalia that you had utilized at the Bar Harbor on the 13th, when you were arrested?

A It was in the trunk of my car.

Q And was the trunk of your car searched?

A Yes, sir.

Q By agents following your arrest?

A Yes, sir.

Q What was in the trunk of your car?

2 A The green suitcase.

3 Q What was in the green suitcase?

4 A All the stuff I would use to mix narcotics.

5 Q I am going to show you what has been marked as
6 Government Exhibit --

7 MR. FEFFER: We will have to have this one marked
8 We will have to have this marked Government Exhibit 100,
9 your Honor.

10 XXXX (Government Exhibit 100 was marked for
11 identification.)

12 MR. FEFFER: Your Honor, excuse me, it is my
13 fault. It has been marked already, it is Government Exhibit
14 80. I am sorry. I missed that.

15 THE CLERK: You have used No. 80.

16 THE COURT: Yes, the receipt in evidence is
17 80. Maybe you had better use 100.

18 Q Can you recognize this suitcase?

19 A Yes, sir.

20 Q And is this the suitcase that was in the trunk
21 of your car on the 14th of April?

22 A Yes, sir.

23 MR. FEFFER: Your Honor, the Government offers
24 100.

25 MR. SLOTNICK: May I have a voir dire?

2 MR. LEVENSON: Is there anything inside?

3 MR. PEPPER: Yes, there is.

4 THE COURT: Look, let's come to the side bar,
5 though, for a minute.

6 (At the side bar.)

7 THE COURT: I think this is trivial, but I
8 just thought we'd stretch. Mr. Slotnick, I am going to
9 give you the voir dire. From what I have heard, I assume
10 that if necessary, the agents would come and say they took
11 it out of the car. And we have talked about trying to
12 avoid stringing out the --

13 MR. SLOTNICK: I just want full recognition of
14 the bag. I am not getting into the chain of custody.

15 THE COURT: You have recognition of the bag,
16 if you get evidence that it was taken out of the car. If
17 you really think it is important, I will let you go ahead.

18 MR. SLOTNICK: I will do it on cross. It is not
19 that important.

20 THE COURT: Does anybody object to the suitcase?

21 MR. LEVENSON: Your Honor, now I take it you are
22 offering just the suitcase and not what is in it?

23 MR. PEPPER: We are going to be offering several
other exhibits that are contained in the suitcase, your
Honor, so it might be better for everyone to wait until

1 all exhibits are at least offered and they can have a
2
3 voir dire or whatever they want at that time, or cross-
4 examination.

5 MR. SLOWICK: I would join with the Government
6 in that. I think it is wise.

7 THE COURT: I suggest to you -- I won't call
8 you up again if you ask for a voir dire, but I suggest to
9 you as we go along, if you really think you need a voir dire
10 because you think you are going to be able to exclude the
11 exhibit, fine; otherwise perhaps you will forego it.

12 MR. FEFFER: We have slips of paper, I have made
13 exhibits on the side, as I did with the hotel records. If
14 we could have a five-minute break at this time we could have
15 all that taken care of so we won't do it in front of the jury.

16 THE COURT: Okay, we will take ten.

17 (In open court.)

18 THE COURT: We will take a ten-minute recess,
19 ladies and gentlemen.

20 (Recess.)
21
22
23
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Q Mr. Conforti, prior to April 7, 1973, what was the largest quantity of heroin which you mixed at one sitting?

MR. SLOZNICK: I object to it.

Q One and a half kilos?

A Yes.

MR. SLOZNICK: I object to the question.

THE COURT: On what grounds?

MR. SLOZNICK: It is outside the realm of this case.

THE COURT: Overruled.

Q On April 7 you tested how many kilos?

A Eight kilos.

Q Mr. Conforti, prior to the break you testified that when you were arrested in the trunk of your car were the mixing paraphernalia that you used to mix narcotics, is that correct?

A Yes, sir.

Q I hand you Government Exhibit 83 for identification. I ask you to look at it and to identify it if you can.

THE WITNESS: Your Honor, I don't want to touch the exhibits.

Q Just look at it.

A It was with me at the time.

Q What is this?

A Mineral oil for testing heroin.

Q Can you repeat that?

A It is mineral oil used to test heroin.

Q Is this the mineral oil that you used or what is left of the mineral oil you used?

A Yes.

MR. PEPPER: The government offers 83, your Honor.

MR. SLOTNICK: Same objection, your Honor.

THE COURT: All right, it will be received.

(Government Exhibit 83 for identification received in evidence.)

Q I show you 84 for identification and ask you to look at it and tell the Court and jury if you can identify it?

A Yes, eyedroppers and filters for the mask used.

Q What is this used for?

A Part of testing heroin, the eyedroppers.

Q Was that used on April 13?

A Yes, sir.

MR. PEPPER: The government offers 84, your Honor.

MR. SLOTNICK: May I see it?

Again, we have the separate piece of paper that doesn't belong to the exhibit and I ask that it be removed.

MR. FEFFER: We stapled it together. We do not intend to place these before the jury. When they are stapled together you can't see the writing underneath.

MR. SLOTNICK: It is rather apparent to me.

THE COURT: I don't know what piece of paper it is. Wait a second. Let me hear about it.

(At the side bar.)

MR. SLOTNICK: These exhibits were exhibits that were adduced at the Sperling trial during this past June. I don't know why the jury has to know there was another trial. It is obvious that was an exhibit and it is older and it must have been used at another trial. The other exhibit has a date placed on it and it is just as simple to mask it over.

MR. FEFFER: That is what we attempted to do.

THE COURT: You didn't do it very well.

What is the trouble with taking it off?

MR. FEFFER: It is a lot easier. We have no intention of passing this to the jury.

THE COURT: If you ever do pass it to the jury, see to it that you and Mr. Slotnick are agreed that the masking is sufficient.

MR. SLOTNICK: I object to it on the ground of relevancy as to my client.

MR. PEPPER: I am sure Mr. Slotnick during the course of his cross examination is going to go into Mr. Conforti's prior testimony at the Sperling trial so it is very frivolous.

THE COURT: What are you going to do?

MR. SLOTNICK: I may not indicate that he testified at a trial. I may indicate -- I don't know why everybody is shocked -- that he testified in this courthouse without referring to the Sperling case or where it was and what it was.

THE COURT: But at that point it becomes a little bit silly.

MR. SLOTNICK: No, it doesn't.

THE COURT: People are going to know he is not testifying in a security fraud case.

MR. SLOTNICK: He testified before the grand jury, there are other witnesses who testified before the grand jury. Why is it that the jury has to make this fine distinction and decide that he testified in another trial?

THE COURT: We will wait and see but I made a ruling.

(In open court.)

THE COURT: Received.

(Government Exhibit 84 for identification received in evidence.)

Q Mr. Conforti, I show you Government Exhibit 85 for identification and ask you to look at it and identify it if you can?

A Yes, these are plastic bags I received for wrapping heroin.

Q Are these part of the or a portion of the plastic bags used?

MR. SLOTNICK: This is a conversation between Mr. Feffer and the witness.

MR. FEFFER: I will step back.

Q Were these plastic bags found in your trunk on April 14?

A Yes, sir.

MR. FEFFER: The government offers 85.

MR. SLOTNICK: Objection as being irrelevant to my client.

THE COURT: Overruled.

MR. SLOTNICK: Also, I have the same problem with the little piece of paper.

THE COURT: We will have the same solution to that problem.

MR. SLOTNICK: Thank you, your Honor.

MR. PEPPER: Any further objections?

THE COURT: I guess not. It is received.

(Government Exhibit 85 for identification received in evidence.)

Q Mr. Conforti, I show you Government Exhibit 86 for identification and ask you to identify that?

A Yes, sir.

Q Will you tell the Court and jury what it is?

A Pyrex used when you put the mineral oil in for testing heroin.

Q Was this found in the trunk of your car on the 14th?

A Yes, sir.

MR. PEPPER: The government offers 86.

MR. FEITELL: No objection.

MR. SLOVICK: Same objection, your Honor.

THE COURT: All right, it will be received.

(Government Exhibit 86 for identification received in evidence.)

Q Mr. Conforti, I want to show you what has been marked as Government Exhibit 87 for identification. Can you identify this?

A Yes.

Q What is it?

A It is a thermometer for testing heroin.

Q Was that thermometer found in the trunk of your car on April 14?

A Yes, sir.

Q When you were arrested?

A Yes, sir.

MR. WEAVER: The government offers 87, your Honor.

MR. SLOTHICK: I object, your Honor.

MR. FEITELL: Can I see it?

THE COURT: Show it to defense counsel.

MR. FEITELL: It is broken.

Q Was that thermometer broken the night when it was found in your trunk on April 14?

A No, sir.

MR. WEAVER: If it was broken, your Honor, it was probably my fault in handling it.

MR. SLOTHICK: I would object to the introduction of this, your Honor, as not being relevant to my client.

THE COURT: Overruled.

(Government Exhibit 87 for identification received in evidence.)

Q Mr. Conforti, I show you what has been marked as 88 for identification. I ask you to look at it and identify it if you can.

2 A Yes, sir.

3 This is a scale used for weighing the heroin.

4 Q This was a scale found in your car on the 14th?

5 A Yes, sir.

6 MR. PEPPER: The government offers 88 in
7 evidence.

8 MR. SLOVICK: Same objection.

9 MR. PETTLE: I join in that, your Honor, with
10 respect to my client.

11 THE COURT: Overruled.

12 (Government Exhibit 88 for identification
13 received in evidence.)

14 Q Mr. Conforti, I ask you to look at Government
15 Exhibit 89 for identification and ask you if you can
16 identify it?

17 A This is a spoon.

18 Q What is it used for?

19 A For handling narcotics.

20 Q Heroin?

21 A Yes, sir.

22 Q Was it found in the trunk of your car?

23 A Yes, sir.

24 Q On the 14th of April?

25 A Yes, sir.

MR. FEFFER: The government offers 99, your Honor.

MR. SLOTNICK: Same objection.

THE COURT: Same ruling. It is received.

(Government Exhibit 89 for identification received in evidence.)

Q Mr. Conforti, I want to show you 90 for identification. I ask you to look at it and identify it if you can.

A Yes, sir.

Q What is it?

A It is a mask.

Q Did you use this mask?

A No, sir.

Q Who used the mask?

A John Caruso.

Q What for?

A He couldn't stand the odor of heroin when we were mixing so he would put that mask on.

MR. FEFFER: The government offers 90, your Honor.

MR. SLOTNICK: What is the name of this item?

MR. FEFFER: A mask.

MR. SLOTNICK: I object to it again as having no relevance to my client.

THE COURT: Overruled.

(Government Exhibit 90 for identification received in evidence.)

Q I show you 91 for identification and ask you if you can identify it.

A It is a mask.

Q Used for the same purpose?

A Yes, sir.

Q By John Caruso?

A Yes, sir.

Q Was it in the trunk of your car on the morning of April 14?

A Yes, sir.

MR. PEPPER: The government offers 91, your Honor.

MR. SLOTNICK: Same objection.

THE COURT: Same ruling.

(Government Exhibit 91 received in evidence.)

Q I show you Government Exhibit 92 for identification, Mr. Conforti. I ask you to look at it and identify it, please.

A Yes, sir.

Q What is this?

A A spoon.

Q What is that spoon used for, Mr. Conforti?

A Handling heroin.

Q Was this spoon found in the trunk of your car on the 14th of April?

A Yes, sir.

MR. FEFFER: The government offers 92, your Honor.

MR. SLOTNICK: Same objection.

THE COURT: All right, same ruling.

(Government Exhibit 92 received in evidence.)

Q Mr. Conforti, I show you 93 for identification and ask you to look at it and identify it if you can.

A Eyedroppers.

Q What are they used for?

A For testing heroin.

Q Specifically, what is done with these eyedroppers?

A Sometimes you can put the heroin in the eyedropper with water and shake it and if the heroin floats in the water that means it was out.

Q Was this also found in the trunk of your car on the morning of the 14th of April?

A Yes, sir.

MR. FEFFER: The government offers 93.

MR. SLOTNICK: Same objection.

THE COURT: Same ruling. Received.

(Government Exhibit 93 for identification received in evidence.)

Q Mr. Conforti, I show you 94 for identification and ask you to look at it and identify it if you can.

A Gloves used by Caruso.

Q What did Caruso use these gloves for?

A He used those when we used to handle the heroin.

Q Were these gloves found in the trunk of your car on the 14th of April?

MR. FEITELL: I object to this unless he was there when these were removed.

MR. PEEFFER: Let me ask the question.

Q Were you present when the trunk of your car was searched?

A Yes, sir.

Q Were these gloves found in the trunk of your car?

A Yes, sir.

MR. PEEFFER: The government offers 94.

MR. SLOTNICK: I object as to the relevancy to my client.

MR. FEITELL: I join in that objection.

THE COURT: Overruled.

(Government Exhibit 94 for identification,
received in evidence.)

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Q I show you 95 for identification. Can you identify that?

A Yes, sir.

Q What is this?

A A can of Right Guard.

Q What was the Right Guard used for?

A Well, after we would clean the hotel, I would spray that because there was an odor left in the hotel.

MR. FEFFER: Government offers -- let me ask this one question, your Honor.

Q Was this Right Guard found in the trunk of your car on the 14th of April?

A Yes, sir.

MR. FEFFER: Government offers 95, your Honor.

MR. SLOTNICK: Same objection. The deodorant can has no connection with my client.

MR. FEITELL: I join in the objection.

THE COURT: It will be received.

(Government's Exhibit 95 received in evidence.)

Q Mr. Conforti, I show you 96 for identification and ask you to look at it and identify it, if you can.

A Yes. It is the heat sealer.

Q What is the heat sealer used for?

A For sealing the bags of mixed heroin.

Q Was this heat sealer in the car, the trunk of your car on April 14th?

A Yes, sir.

MR. FEPPER: Government offers 96.

MR. SLOTNICK: Your Honor, I object. I think this has no relevancy to my client.

MR. FRITELL: I join in the objection. No relevancy to my client.

THE COURT: It will be received.

(Government's Exhibit 96 received in evidence.)

Q Mr. Conforti, I show you 97 for identification. I ask you to look at it and identify it.

A This was the screens used for mixing narcotics.

Q What do you do with these screens or what did you do with these screens?

A I would mix the mannita and heroin together with them.

Q And was this -- were both these screens found in the trunk of your car?

A Yes, sir.

Q On the morning of the 14th of April?

A Yes, sir.

MR. FEPPER: Offer 97.

MR. SLOTNICK: Same objection.

2 THE COURT: Same ruling.

3 (Government Exhibit 97 received in evidence.)

4 Q Mr. Conforti, were all these exhibits that you
5 have identified so far used by yourself, John Caruso or Jack
6 Spada after mid-March of 1973 when you testified that Capra,
7 Guarino and Sperling came together?

8 A Yes.

9 MR. SLOTNICK: I object to the form of the
10 question, your Honor.

11 THE COURT: Sustained. Sustained. Don't sum up that
12 way, Mr. Feffer.

13 Q I show you 98 for identification.

14 A Yes.

15 Q Ask you to look at this.

16 A Yes.

17 Q Can you identify what this is?

18 A John E. Hooks brother, Mike, bought them in Bellmore
19 with me. Those are test tubes used for testing heroin.

20 MR. SLOTNICK: I object to that, your Honor, there
21 is no relevancy to that in this case, and that is just
22 interjecting a bit of prejudice against my client, and I
23 ask that that be stricken. He is not named. There is no
24 reason for that. The witness knows better.

25 THE COURT: No, don't keep running on.

1 I don't know how much law the witness knows, Mr. Slotnick.

2 MR. SLOTNICK: Someone knows better.

3 THE COURT: There is no claim of any conspiratorial
4 relationship, is there?
5

6 MR. PEPPER: With John Capra's brother?

7 THE COURT: With the brother.

8 MR. PEPPER: No, your Honor.

9 THE COURT: Strike that out, and the jury will
10 disregard that.

11 Objection sustained.

12 MR. SLOTNICK: In view of that, I move for the
13 withdrawal of a juror as to my client.

14 THE COURT: That is denied.

15 Q Were these test tubes found in the trunk of your
16 car on the morning of the 14th?

17 A Yes, sir.

18 MR. PEPPER: Offer 98, your Honor.

19 MR. SLOTNICK: Can I see that?

20 (Pause.)

21 MR. SLOTNICK: Object to their introduction, your
22 Honor, as not being relevant to my client, and should not
23 be binding upon him.

24 THE COURT: All right. Overruled.

25 (Government's Exhibit 98 received in evidence.)

Q Mr. Conforti, I show you 99 for identification, and ask you to look at that and identify it, if you can.

A Yes.

Q And what is it?

A It is a stove.

Q What was the stove used for?

A For heating up the mineral oil and for testing narcotics.

Q Was this stove found in the trunk of your car on the 14th of April?

A Yes, sir.

MR. FEFFER: Government offers 99, your Honor.

MR. SLOTNICK: Same objection, your Honor.

THE COURT: All right, same ruling.

(Government's Exhibit 99 received in evidence.)

MR. FEFFER: Your Honor, at this point the government offers the suitcase, the green suitcase, which has been marked as 100.

THE COURT: Subject to what we discussed before, is there any objection?

MR. SLOTNICK: May I have a moment, your Honor?

(Pause.)

MR. SLOTNICK: I can do it on cross, your Honor. I object to the introduction of the evidence. However, I can

reserve my voir dire for cross, if your Honor changes his mind.

MR. FEITELL: I join in the objections to all of these.

MR. MC ALEVY: As do I.

MR. LEVENSON: I object as to my client, your Honor.

THE COURT: It is received.

(Government's Exhibit 100 received in evidence.)

MR. FEFFER: I have no further questions, your Honor.

Your Honor, I am sorry, just one.

BY MR. FEFFER:

Q Was anything else found in the trunk of your car that you haven't identified?

A There was mannita that I had.

Q Approximately how much mannita?

A About 20 pounds.

Q Were these in plastic bags?

A Yes, sir.

Q Was some lactose also found?

A Yes, sir.

Q These were all in plastic bags?

A Yes, sir.

MR. PEPPER: I have no further questions.

MR. SLOTNICK: Do you have that present in court?

MR. PEPPER: Have what present in Court?

MR. SLOTNICK: Whatever was found, the mannita, lactose?

MR. PEPPER: Yes, right here. Do you want to see it, Mr. Slotnick?

MR. SLOTNICK: I think I just want to know if it is present. I will get to it.

MR. PEPPER: Sure is.

CROSS EXAMINATION

BY MR. SLOTNICK:

Q Mr. Conforti, I show you Government's Exhibit 100 and ask whether these scotch tapes were on the bag when it was removed from your --

A They were never there.

Q Would you open this up, please, and take a look inside?

A No, sir.

THE COURT: Would you open it for him, please.

Q Now, was this material inside?

A Yes, sir.

Q Now, what is this?

A Scotch tape.

2 Q Agent Tuerack, with respect to the green bag,
3 what part of the vehicle was that in?

4 A It was in the trunk.

5 Q Was everything that you found in connection with
6 this case in the trunk?

7 A To my knowledge, yes -- as far as everything we
8 found in that vehicle that is here now.

9 Q Now, let us distinguish between the trunk and
10 the green bag. What did you find in the green bag?

11 A The bags of white powder on the table, the whole
12 list of things, scales, thermometers, heat sealer, plastic
13 bags, gloves, if I remember correctly, and a whole number of
14 small little odds and ends, masks.

15 Q What did you find outside of the suitcase in the
16 trunk?

17 A Nothing.

18 MR. FEITELL: No further questions.

19 THE COURT: Other cross, gentlemen?
20 Any redirect examination?

21 MR. FEFFER: No, your Honor.

22 THE COURT: All right, Mr. Tuerack.

23 (Witness excused.)

24 THE COURT: I think we will stop now. Let us
25 suspend, ladies and gentlemen, and let us plan to resume at
10 a.m.

be stricken from the record.

THE COURT: That is denied.

MR. LEVENSON: Your Honor, I think it is the government's intention to call Dr. Romano.

MR. FELD: No.

THE COURT: Mr. Feld is shaking his head.

MR. FELD: No, it is not correct, your Honor.

THE COURT: Anything else, gentlemen?

MR. SLOTNICK: I just would join in Mr. McAlevy's objection and move to strike the testimony of Mr. Conforti as being, again, as I indicated preliminarily, beyond the bounds of the conspiracy presented to this Court under this indictment and presenting us with a very serious Kotteakon problem, and if the Court fails to do that, I would then ask for a mistrial.

MR. FEITELL: I would like to amplify that to this extent. To my recollection, the testimony indicates that the terminal date with respect to most of the testimony in this case goes back to the beginning of 1972. I think that is about the last wiretap we have, February 3, 1972. And then, unless I am mistaken on this, I don't think there is any testimony after February 1972 having to do with my client. I am not saying it has anything to do with anybody else's. But we have a gap of over a year until we

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2 get into March with this Sperling affair, and it seems to
3 me that the Court is going to indulge some presumption
4 that a conspiratorial course of conduct, concerning which
5 there is no evidence for an entire year, persisted during
6 that year, and not only did it persist during that year,
7 it persisted with respect to my client and, who is not
8 even named by Mr. Conforti or otherwise identified in any
9 criminal way.

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SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

THE COURT: All right, I understand your position. The application is what? What is your application?

MR. FEITELL: This continuing objection with respect to the Sperling material constituting an altogether different conspiracy.

THE COURT: Your arguments were somewhat different and I believe I understood them but your motion is likewise denied.

MR. LEVENSON: Your Honor, I wish to join in that motion for a somewhat different reason. My client also was not mentioned. There is no evidence there was any conspiracy going on with respect to my client at the time that Conforti and Sperling entered the picture and certainly no evidence that my client, who is alleged to be a purchaser of narcotics from what is alleged to be a sale by Mr. Capra and what have you, had anything to do with Sperling, wasn't even on the same level as Sperling, and therefore, I ask all of Conforti's testimony be withdrawn.

MR. BLACKSTONE: Your Honor, I think I have already registered my objection to this testimony as well as my objection to any testimony against my client beyond December 1970. I think for reasons that have already been mentioned, and also the reason presently

Norman Goldstein?

A Yes.

Q Did you have occasion to take photographs of these individuals?

A Yes.

Q During that time period?

I show you what has been marked as Government Exhibit 115 for identification. I will ask you whether you can identify that?

A Yes, I can identify it.

Q Do you know approximately when that was taken?

A About July of 1971.

Q Was it taken by you?

A Yes.

Q Where was it taken?

A That was on Seventh Avenue in front of 844.

Q Where were you positioned at the time this photograph was taken?

A I was in the Hotel Wellington on 54th Street, corner of Seventh Avenue.

Q In a hotel room?

A Yes.

Q Is this an accurate representation of what you saw at the time this photograph was taken?

1 this was also taken in July of 1971. I don't know what
2 possible connection that could have with Mr. Guarino. The
3 only testimony he elicited yesterday was a date after, in
4 March, in that neighborhood, and I think, if anything, it
5 would just be prejudicial.
6

7 MR. FEITELL: I object to it for the reason that the
8 apparent location of two individuals, whose names came up
9 in yesterday's testimony, in a street photograph, going back to
10 July 1971, is entirely irrelevant because the only testimony
11 that we heard yesterday was with respect to some kind of
12 agreement being arrived at in March of 1973 or thereafter,
13 so that this so far predates that event, and being unaccompan-
14 ied by any other evidence showing the beginnings of any alleged
15 arrangement between the parties allegedly depicted in the
16 photograph, that this is irrelevant, and tends very much to
17 prejudice the defendants.
18

19 MR. LEVENSON: Your Honor, I object on the grounds
20 that there is no testimony and no evidence whatsoever that my
21 client ever knew Sperling who apparently is depicted in the
22 photograph. I object on those grounds, respectfully.
23

24 THE COURT: All right. The photo will be received.
25

(Government's Exhibit 116 received in evidence.)

Q All right, with respect to Government's Exhibit 116
in evidence, there is a number 1 next to an individual in that

photograph. Who is that individual?

A Herbert Sperling.

Q Would you put his initials on top, right above him in the photograph?

(Witness complied.)

Q And there is another individual who has the number 2 circled next to him. Who is that individual?

A That is Leo Guarino.

Q Would you put his initials above him in the photograph?

(Witness complied.)

MR. FELD: With the Court's permission, I will pass these two photographs to the jury now.

THE COURT: Yes.

(Handed to the jury.)

Q With reference to the period in October of 1972, did you also have occasions to take photographs in the location to which you have testified?

A Yes, I did.

Q I show you what's previously been marked as Government's Exhibit 117 and 119 for identification. I ask you whether you can identify those photographs?

A Yes, I can.

Q And where were they taken?

2 A These were taken in front of 844 Seventh Avenue.

3 Q By you?

4 A Yes.

5 Q Do they accurately depict what you saw at that
6 time?

7 A YES.

8 THE COURT: What time are you talking about?

9 Q When did you take these photographs?

10 A October 4, 1972, your Honor.

11 Q With reference to 117 for identification, whom can
12 you identify in that photograph?

13 A Herbert Sperling and Leo Guarino.

14 Q Would you indicate the initials of those two
15 individuals above them in the photograph.

16 (Witness complied.)

17 Q Now, directing your attention to 119 for iden-
18 tification, whom do you recognize in that photograph?

19 A Leo Guarino, Jack Spada Norman Goldstein and Eddie
20 Schwark.

21 Q Would you indicate the initials of each next to the
22 person in the photograph.

23 MR. McALEVY: I am going to object to these names
24 that come into the case for the first time now. There's
25 been absolutely no testimony, to my recollection, about anyone

else except Spada and Guarino.

MR. SLOTNICK: I heard Goldstein's name mentioned once yesterday but the other name I don't know, Schwark.

MR. FELD: I don't believe Schwark's name was mentioned. Goldstein's was. These people are in the photograph, and if this officer can identify them, it seems to me that he's permitted to do that.

THE COURT: Well, let me understand, gentlemen: Suppose this person named "x" or Schwark is in the photo and he has never been heard of before, and he will never be heard of again, is that what you are saying?

MR. FELD: I think that is true.

THE COURT: Well, instead of putting the burden on the defendants, I think we should ignore him then. There might be all kinds of people in a picture. So we will strike the reference to that other name.

MR. FELD: Yes.

THE COURT: Which I assume doesn't mean anything to any of us anyhow. All right.

Q Would you identify with the initials and an arrow next to Mr. Guarino, Mr. Spada and Mr. Goldstein.

(Witness complied.)

MR. FELD: We offer 117 and 119, your Honor.

Q Directing your attention to October 30, 1972, did

you also have occasion to take photographs?

A No, I didn't.

Q Let me show you what's been marked as 118 for identification. Can you recognize that photograph?

A Yes, I have seen it before.

Q And who is this there?

MR. McALEVY: I can't hear the witness, Judge.

THE WITNESS: Yes.

THE COURT: He said yes, he's seen it, and then Mr. Feld asked, who is in there. Is there any objection to that?

MR. McALEVY: Certainly I object to it, your Honor.

THE COURT: Okay, I just wanted to know. Sustained.

Q Where was it taken?

A This was taken in front of 844 Seventh Avenue.

MR. McALEVY: Judge, I certainly object to the admission of 117 and 119, the photographs taken on October 4, 1972, for the same reasons set forth, that there has been no testimony in that period of time and my client is not charged with anything on those particular days.

MR. SLOTNICK: My objection, your Honor, is that these photographs --

THE COURT: The last part of your statement is not actually correct. I mean the charge embraces a period --

MR. McALEVY: Yes.

1
2 THE COURT: So technically I think you ought to take
3 that into account.

4 MR. McALEVY: Let me say there has been no spec-
5 ific testimony on this record, to my recollection, of any-
6 thing dealing with, I believe it was, the May date and I
7 am turning myself to that October for the date, in furtherance
8 of any conspiracy.

9 MR. SLOTNICK: My objection, your Honor, is that
10 these photographs should not be binding upon my client. They
11 don't depict him --

12 THE COURT: As to your objection, Mr. McAlevy, you
13 can keep making it but the fact that there is not other
14 evidence about a date doesn't mean that a proffered bit of
15 evidence can't be received. I don't fully understand that
16 objection. It is overruled.

17 And you have the same objection you have been
18 making.

19 MR. SLOTNICK: I join with Mr. McAlevy. I indicate
20 this may be proper, but it has no relevancy for any value other
21 than a little interesting illustration of an individual
22 standing in the street.

23 THE COURT: That is overruled. It will be received.

24 MR. FEITELL: I object to it, too, because my client
25 does not appear at all in any of these photographs.

1 THE COURT: All right. Both will be received,
2 117 and 119.

3 (Government's Exhibits 117 and 119 received in
4 evidence.)

5 MR. FELD: Your Honor, I have no further questions
6 of this witness.

7 THE COURT: All right. Cross examination?

8 MR. McALEVY: Yes, your Honor.

9 MR. FELD: Your Honor, may we pass these to the
10 jury?

11 THE COURT: Yes.

12 MR. McALEVY: Your Honor, I was going to use
13 those for my cross.

14 MR. FELD: Oh, I'm sorry, Mr. McAlevy. Here you
15 are. Do you want the other two?

16 MR. McALEVY: I will wait till the jury is through.

17 MR. FELD: Very good.

18 THE COURT: I don't think we ought to hold up the
19 cross examination. Why don't we ask the jurors to let you have
20 them, and they can be resubmitted later.

21 MR. McALEVY: Thank you.

22 CROSS EXAMINATION

23 BY MR. McALEVY:

24 Q Detective De Luca --

25 ***

2 G E R A L D L I N O, called as a witness by
3 the government, being first duly sworn, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. FELD:

7 Q Mr. Lino, by whom are you employed?

8 A New York City Police Department.

9 Q And for how long have you been employed
10 by the Police Department?

11 A Four years.

12 Q Now, directing your attention to 1972, what
13 was your assignment?

14 A Third Narcotics District, New York City Police
15 Department.

16 Q And particularly --

17 MR. MC ALEVY: I am sorry. I didn't hear
18 any of the response.

19 THE COURT: Officer, would you talk louder.

20 A Third Narcotics District, New York City Police
21 Department.

22 Q And were you conducting an investigation in
23 connection with Herbert Sperling and others?

24 A Yes, I was.

25 Q And did you have occasion during the period

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DAVID SAMUEL, ²⁷⁶⁹ called as a witness by

the government, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. FELD:

Q Mr. Samuel, what is your occupation?

A I am a special agent with the Drug Enforcement
Administration.

Q How long have you been employed as a special
agent?

A Approximately two years.

Q Do you know an individual named Stephen Dellacava?

A Yes, I do.

Q Do you see him in the courtroom?

A Yes, I do.

Q Would you identify him, please?

A He is sitting at the defense table wearing a
blue suit, light blue shirt and a blue tie, with
glasses.

MR. FELD: May the record reflect the identification of Dellacava?

THE COURT: Is that agreed?

MR. FEITELL: Yes.

THE COURT: I only ask because some of these clothing descriptions could be debated. I just want to make sure that you don't want closer identification.

All right.

BY MR. FELD:

Q Mr. Samuel, did you participate in the arrest of Stephen Dellacava?

A Yes, I did.

Q And when did that occur?

A It occurred on the early morning hours of April 14, 1973.

Q And where did that occur?

A Mr. Dellacava was arrested on 86th Street, at the intersection of 86th and Lexington Avenue, in Manhattan.

Q Who if anyone else was present at the time of the arrest?

A Myself, Group Supervisor James Beckner, Sergeant Timothy Restivo and Detective George Eaton.

Q And what happened at the time of the arrest?

A At approximately 2:05 in the morning the four officers I mentioned, myself included, stopped Mr. Dellacava's car at the intersection of Lexington and 86th

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Samuel-direct

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2 Street, removed him from his car and placed him under
3 arrest.

4 Following the arrest, Mr. Dellacava and his
5 car were removed from the street and taken to a Depart-
6 ment of Sanitation parking garage which is located at the
7 West Side Boat Basin, I believe it is at 79th Street,
8 underneath the West Side Highway.

9 When we arrived there I advised Mr. Della-
10 cava of my identity, the fact that he was under arrest,
11 and read him his rights.

12 At this time a search of his car was con-
13 ducted and in the trunk of the car we located a brown
14 canvas gym bag --

15 MR. FEITELL: I will object unless we de-
16 termine at this point who it is who did what, rather
17 than use the term "we."

18 A The trunk was opened by Sergeant Restivo, who
19 located the gym bag in the left-hand corner of the trunk
20 of the vehicle. Sergeant Restivo called me to his
21 side, and the two of us stood there while we took, be-
22 tween the two of us, the gym bag out, opened it up and
23 we discovered a large sum of money inside. At about
24 the same time I noticed that Sears & Roebuck Meals in a
25 Minute plastic bag sealer, it's a heat sealer, lying in

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7 A Bag 127, that is my handwriting on the front,
and my signature on the back, with the seal. The same
8 with 128, my handwriting and my signature on the back.
The contents, this is the money that was seized, be-
9 cause we counted each quantity that is contained in these
10 wrapped-up bundles with rubberbands separately and marked
the amounts in each bundle and rewrapped them and
11 placed them in the bags, the same way we found them.

12 MR. FELD: Your Honor, we offer the contents
of 127 and 128 in evidence.

13 THE COURT: Any objections?

14 MR. FEITELL: May I examine the evidence
before it goes in?

15 THE COURT: Yes.

16 MR. SLOTNICK: My objection is that it is
17 obviously irrelevant to my client.

18 MR. FEITELL: May I have a short voir
19 dire with respect to the slips of paper?

20 THE COURT: All right.

21 VOIR DIRE EXAMINATION

22 BY MR. FEITELL:

23 Q Did you yourself count the money?

24 A A portion of it.

25 Q You did not count all of it, right?

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(Government Exhibit 136A for identification,
received in evidence.)

MR. FIELD: No further questions.

THE COURT: All right, cross examination.

CROSS EXAMINATION

BY MR. FEITELL:

Q On April 14, 1973, you were given an arrest
warrant --

A I was given a Xerox copy of an arrest warrant,
yes, sir.

Q That warrant was in connection with the indictment
in this case?

A Yes, sir.

Q You were told to report somewhere to execute the
warrant, is that correct, yes or no?

A Yes.

Q What area did you go to?

A I proceeded from our headquarters to the
vicinity of Lexington Avenue and I would say 63rd, 64th
Street, in the vicinity of a bar called Bachelor's Three.

Q What time did you get there?

A Arrived there, I would say, approximately
1 to 1:15 in the morning.

Q Now, during the previous 12 hours had you been

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Samuel-cross

2 A Yes, sir, it was.

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3 Q How many officers were involved?

4 MR. PETTELL: Withdrawn.

5 Q Where was the car taken to be searched?

6 A 79th Street boat basin.

7 Q Who was there at the boat basin to begin with?

8 A Sergeant Restivo, Detective Eaton, Group
9 Supervisor Beckner, myself and Mr. Dellacava.

10 Q So there were four police officers there,
11 right?

12 A Yes, sir.

13 Q And he was in cuffs, right?

14 A Yes, sir.

15 Q And what time did you take him down to 57th
16 Street?

17 A Four o'clock.

18 Q And you got there about 2:30, right?

19 A We got to the boat basin about 2:30.

20 Q Right. So the vehicle was in the boat basin
21 for at least an hour, wasn't it?

22 A Yes, sir.

23 Q And officers looked through the inside of the
24 car, isn't that so?

25 A Yes, sir.

2 Q The glove compartment?

3 A Yes, sir.

4 Q Under the seat?

5 A Yes, sir.

6 Q The back seat?

7 A Yes, sir.

8 Q The visors, right?

9 A I would assume so.

10 Q Threw open the hood to see if there was
11 anything inside, right?

12 A Yes, sir.

13 Q And there are crevices and areas inside under
14 the hood where things can be secreted, is that correct?

15 A There are.

16 Q Was there a mat in the trunk?

17 A Yes, sir.

18 Q Did you pick up the mat and look under it?

19 A Yes, sir.

20 Q Nobody found any narcotics, right, in terms
21 of a bag of heroin or a bag of cocaine, right?

22 A That is correct.

23 Q Well, did you find any lactose or mannite in
24 bags or boxes in the car?

25 A No, sir.

Q Did you find any strainers?

A No, sir.

Q Did you find eyedroppers?

A No, sir.

Q You told us everything you found --

MR. FRITELL: Withdrawn.

Q Did you find any Right Guard spray?

A No, sir.

Q After you examined the vehicle did you tell anybody that you wanted the inside of the car sifted and swept?

A No, sir.

Q That wasn't done in the case, was it, right?

A It was not vacuumed.

Q It wasn't vacuumed, no part of the car was vacuumed, right?

A That is correct.

Q And you knew you were going out to make a narcotics arrest, right?

A Yes, sir.

Q Weren't you disappointed that you didn't find some narcotics in bags? Weren't you?

A It's my professional goal.

Q You would have felt better if you had found

it, right? Could you tell me

did you find any, sir, any

Q But that night other people in other places
were arrested, right?

A Yes, sir.

Q And the officers in those cases in some
instances found heroin and cocaine, didn't they?

A I believe they did.

Q And they all brought it up to 57th Street,
right?

A Yes, sir.

Q And these bags of that stuff all over the
place, isn't that so?

A It wasn't that much.

Q Well, it was more than a pinch, wasn't it?

A Not much.

Q A pinch? You know what a pinch is, don't
you?

MR. FELD: Objection, your Honor.

Q Well, was the entire drug haul that night more
or less than a pinch, from all the other persons who were
arrested that night, forgetting about the people in this
courtroom?

MR. FELD: Objection.

1 Q Could you tell us how it works? Oh, incidentally,
2 did you find any plastic bags in the back of the car?

3 A No, sir.

4 Q That go with the heat sealer?

5 A No plastic bags.

6 Q Have you ever seen a sealer like that before in
7 your life?

8 A Similar.

9 Q These are sold in all department stores, are they
10 not?

11 A I believe they are.

12 Q Incidentally, did you ever see the sealer that
13 was taken from the back of Mr. Conforti's car?

14 A Yes, sir.

15 Q Quite different from this, right?

16 A Different physical appearance.

17 Q Mr. Conforti's sealer is a professional sealer,
18 isn't it?

19 MR. FELD: Objection, your Honor.

20 MR. FEITELL: If he knows.

21 THE COURT: Well, ask him if he knows what a
22 professional sealer is.

23 THE WITNESS: I know what a professional sealer
24 is.

1
2 MR. FEITELL: Do we have that sealer in court?
3 Could we get it please?

4 Q Tell us how that white plastic sealer is used.

5 A I believe the principle is you plug it in, it
6 heats up this metal strip, place the plastic bag inside after
7 waiting a certain amount of time, then close it and hold
8 it closed for a couple of seconds, and it melts the plastic
9 on the bag and seals it.

10 Q Isn't it a fact that the bags that come with
11 this have holes in them at the top, and that the holes are,
12 these protrusions are slipped into the holes so that the bag
13 is drawn tightly before the sealing process begins?

14 MR. FELD: Objection.

15 THE COURT: Sustained. First find out whether
16 bags come with it, Mr. Feitell.

17 Q Well, did you ever go to Sears and buy a Meals-
18 in-a-Minute kit?

19 A No, sir.

20 Q Do you have any knowledge as to whether or not
21 plastic bags come with these units?

22 A No, sir, I don't.

23 Q Did you make any attempt to utilize the sealer
24 in a test procedure yourself?

25 A No, sir.

Q Do you know if this sealer was operative when you took it from the car?

A No, sir, I don't.

Q You never tested it, right?

A No, sir.

Q So you don't know if it was broken at that time?

A No, sir.

Q Do you know if it is operative now?

A No, sir.

Q Is it operative now?

A No idea.

Q Do you know if it was broken and repaired?

MR. FELD: Objection.

THE COURT: You mean at some time prior to its being --

MR. FEITELL: Some time after he came into possession of it.

THE COURT: After he came into it?

MR. FEITELL: Yes.

THE COURT: Do you know about that?

THE WITNESS: No, sir, I don't.

Q Now, did you look inside under the cover of the heat sealer, did you raise the cover when you examined it?

A Yes, sir.

1 jkal2

Samuel-direct

2 the trunk. This was also removed. The money was taken
3 counted in the presence of Mr. Dellacava and myself,
4 Sergeant Restivo, Detective Eaton and Group Supervisor
5 Beckner.

6 Q How much money?

7 A \$13,999.

8 Q Would you continue?

9 A One thing I neglected to mention. Prior to
10 our searching the trunk, Mr. Dellacava's person was
11 searched. We discovered \$1200 in cash in the left
12 breast pocket of his jacket. This money was also
13 taken out, counted and replaced. Following the count-
14 ing of the money, Mr. Dellacava was taken to our offices
15 at 57th Street where he was processed.

16 Q Did you find any gambling slips in the car?

17 A No, sir.

18 Q Did you find any chess sets in the car?

19 A No, sir.

20 Q Now, the items that were taken from the
21 trunk of the car, what was done with them?

22 A The \$13,999 was taken to our office, I
23 believe we arrived there at 4 in the morning. It
24 was again counted, locked in two lock-seal evidence
25 envelopes and handed over to a custodian who was designated

THE COURT: Sustained.

2837

BY MR. PEITELL:

Q Mr. Conforti was arrested that night?

A Yes, sir.

Q Did you see the officers bring up all the stuff they found in his car?

A No, sir.

Q You never saw any of those bags of lactose and --

A First time I saw them was yesterday or the day before.

Q But you know they were taken up to 57th Street, don't you?

A Yes, sir.

Q By other officers, right?

A Yes, sir.

Q Put in the vault up there at a certain point in time, right?

A Yes, sir.

Q Now, four days later, four days later, after the arrest, you took the bag to have it looked at by a chemist, right?

A On Wednesday.

Q You wanted him or somebody wanted him to see

1 if there are any traces of a narcotic in the bag, right?

2 A That is correct.

3 Q Somebody figured maybe we will find something
4 in the bag, we didn't find it anywhere else, right?

5 A We wanted to check the bag.

6 Q Where is the chemist?

7 A 90 Church Street.

8 Q Who was he connected with?

9 A Department of Justice.

10 Q You work weekends?

11 A Occasionally.

12 Q You have to, it's part of your duty, isn't it?

13 A Yes, sir.

14 Q People involved in law enforcement -- you
15 know many people involved in law enforcement who work
16 weekends and nights, right?

17 MR. FELD: Objection.

18 THE COURT: Sustained.

19 Q Is a chemist available there on Saturday?

20 A No, sir.

21 Q Sunday?

22 A No, sir.

23 Q Well, do they have hours during the week like
24 Monday through Friday?
25

with respect to the bag.

Q Did you make a visual examination of the bag before you commenced your procedures?

A Yes, I did.

Q What did you see?

A I saw nothing of note at all on the outside of the bag, and I was not able to identify anything by my observation on the inside of the bag. This was the reason I elected to employ the vacuum search technique.

Q So that when you couldn't, after you visually examined into the bag itself, right, before you cut it, right?

A Yes.

Q And you didn't see anything which appeared to you to be of any consequence or notable, correct?

A Perhaps I should explain.

Q Well, I am not asking you for an explanation. Just try to answer my questions. You did perform a visual examination of the interior of the bag, right?

A Yes.

Q And after you concluded that visual examination you determined that you were going to cut the bag, right?

A Yes, that's correct.

Q And it was at that point that you utilized the

Q You performed, you say, about 22 or 23 vacuumings, is that what you have said?

A Yes, I have participated in that many vacuum searches.

Q And other people in your lab also participate in the vacuum searches, right?

A Yes, sir.

Q And they use the same machine, right?

A Yes, sir.

Q Now, you keep that machine in a certain place before you use it, where is it kept?

A Well, there is a storage location for the vacuum sweeping equipment. It is one of the supervisor's offices.

Q So it is not kept in your desk, right?

A No.

Q You have to go elsewhere to get the machine, right?

A Yes.

Q Because other people use it too, correct?

A Yes.

Q Okay. Now, on the day you used the machine, do you know who used it before you, when it was last used before you, of your own knowledge?

A No, I don't recall.

MR. FEITELL: Could I have the alleged sweeping

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1 along two sides, then came back to the original starting
2 point and proceeded along the other two sides. Every time
3 I passed a seam, I got the area that was right in each
4 corner of the bag also.
5

6 Q So you were working in the crevice area that
7 forms the ---

8 A The crevice area and the corners formed by the
9 bag also.

10 Q And came up with certain materials?

11 A Yes, I did.

12 MR. FEITELL: I am going to open this bag.

13 Q Incidentally, is what you removed from the gym
14 bag on this filter?

15 A Well, is that the packet that I have identified
16 as corresponding to the gym bag?

17 Q Yes.

18 A Yes. The dust I removed I replaced in that whirl-
19 pack bag.

20 Q You removed the filter from the device after
21 you did your vacuuming, right?

22 A That's correct.

23 Q And what examination did you perform on the
24 filter?

25 A Are you referring to the chemical analysis, sir?

1 that you used is a quantitative or a qualitative test?

2 A The test I employed in the manner I employed
3 them was strictly qualitative; in other words, I did not
4 do them to determine how much. It was just determining
5 whether or not something was there.

6 Q Do you have any idea how much, I mean, with
7 any degree of scientific accuracy?

8 A Would you repeat the question, please?

9 Q How much heroin was on that filter, can you tell
10 that to us with any degree of scientific accuracy?

11 A It is a very difficult question, sir.

12 Q If you can't answer it just say you can't.

13 A Well, if I could give you my best estimation.

14 Q You are estimating for the test you did?

15 A Yes, I can only estimate it.

16 Q Is there any procedure that you could utilize
17 to separate out the heroin on the filter from the other
18 materials on the filter and weigh it, yes or no?

19 A Would you repeat that? Would you rephrase the
20 question? I am not sure I understand what you are asking me.

21 (Question read.)

22 A Not to my knowledge.

23 Q Now, if there was a trace of heroin on the
24 filter, could you tell us what the purity of that trace was

25 ***

hsg 8

Morris-cross

off the booking counter?

A Yes, sir. Everything is out -- you want me to explain the booking procedure, sir?

Q No. Just tell me if you took everything off.

A I didn't. The turnkey did, yes.

Q When you booked Morris where was Middlebrook?

A He was in an adjacent room being thoroughly given a skin search.

Q And then Morris was booked?

A He was the second to be booked, yes.

Q Did you take everything out of his pockets?

A I didn't, no, sir.

Q Did you direct him to take everything out of his pockets?

A I don't recall if I did, but he was directed to, yes, sir.

Q Was he handcuffed at the station precinct?

A Yes, sir.

Q His hands behind his back?

A Yes, sir.

MR. STONE: No further questions.

Excuse me, your Honor.

Q Officer, did you personally observe Mr. Morris take that piece of paper out of his pocket?

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imately 100 milliliters of methanol and shook it. I then filtered it and washed out the residue with some additional methanol and filtered it into another beaker. I then concentrated the methanol down into a very small amount and used that residue for the remaining test that I mentioned.

Q So that you consumed whatever you had removed to perform the test, is that your testimony?

A I am sorry, I don't understand.

Q Whatever you removed from the bag, which found its way to the surface of the filter, did you save any part of the filter surface?

A No, it was all consumed in analysis.

Q You consumed everything?

A It was consumed in analysis, yes.

Q You couldn't have cut the filter in half and worked with one-half of the filter?

MR. FELD: Objection, your Honor.

Q Or could you?

THE COURT: On what ground?

MR. FELD: Speculative, what he could do.

THE COURT: No, I will allow it.

Q Could you have done that?

A I don't know if I could have done that with the same results. I honestly don't know. Possibly, but

I really don't know whether I would have been able to have the same results.

Q In other words, the quantity --

THE COURT: Let him finish.

MR. FEITELL: I am sorry.

Q You don't know if you could have done that to any useful effect, to any determinative effect, correct?

MR. FELD: I object to the form of the question.

Q Is that your testimony?

THE COURT: Sustained. I don't know really what the determinative effect means exactly. Go on.

MR. FEITELL: I will define it for him.

Q Are you saying that had you cut the filter in half and performed your test on one-half it might well be that the result of your testing would be inconclusive or negative?

A That is very possible.

Q And that if you had thereafter examined the other half that likewise, the result might have been inconclusive or negative?

A That is possible, yes.

Q And would the reason for that be that the quantity that you are dealing with was so miniscule?

A Yes, we are talking about traces.

2 Q How can you identify it?

3 A My initials, date and sample number appear on
4 the exhibit.

5 Q When did you receive this bag?

6 A On May 3, 1973, sir.

7 Q And what kind of examination did you perform with
8 respect to this bag?

9 A I analyzed this exhibit for the purpose of
10 determining if it contained any traces of drugs.

11 Q How did you do that, with what type of device?

12 A In performing my analysis I first, I essentially
13 collected dust from inside the bag. Well, first I carefully
14 examined the entire bag. I then cut it open and used a
15 special vacuum device to collect the dust traces that were
16 present in the corners, in the seam and underneath the base-
17 board of the exhibit, and I then analyzed this residue which
18 I collected.

19 Q What condition was the bag in when you first
20 received it?

21 A When I first received the bag, sir, it was intact.
22 As I said, I cut it open. It was in a zippered condition,
23 and the seals, it was in a sealed condition also, the
24 seals were intact when I received it.

25 Q And as a result of your analysis, what did you

find that the dust samples contained?

A I found that the bag contained traces of heroin.

MR. FELD: May we have this marked as an exhibit?

(Government Exhibit 131 was marked for identification.)

Q I show you 131 for identification, and ask you whether you can identify it.

A Yes, sir, I can.

Q How do you identify it?

A It has my sealing information, my name, and the sample number appearing on it.

Q What does that contain?

A This contains two pieces of filter paper and a dust residue.

Q And is that in any way connected to what you have testified with respect to this gym bag?

A Yes, sir. This is -- the pieces of filter paper were items which I used during my analysis and the dust is the residual dust which I removed from the bag.

Q Was there any residual traces left after your analysis, traces of the heroin?

A I consumed all the heroin that I isolated, sir. I believe that is probably all that there could be.

MR. FELD: May we offer 131 for identification.

1
2
3 MR. SLOINICK: I object, your Honor, as not
4 being binding on my client.

5 THE COURT: Overruled.

6 MR. FEITELL: I object.

7 THE COURT: On what ground?

8 MR. FEITELL: I object on the ground that the
9 quantity is insufficient for analytical purposes, the chain
10 of possession issue and other items that I will open up
11 in my own examination.

12 THE COURT: Overruled. Any other objections?

13 It is received.

14 (Government Exhibit 131 was received in
15 evidence.)

16 Q Now, directing your attention to May 15, 1973,
17 were you on duty that day?

18 A Yes, I was, sir.

19 Q And could you tell us what you did on that day?

20 A Yes, sir. On that day I assisted Federal agents
21 by conducting a vacuum search of a hotel in Long Island.

22 Q Do you know the name of that hotel?

23 A It was the Bar Harbor Hotel, sir, Massapequa.

24 Q What places in the hotel did you vacuum search?

25 A We examined -- I conducted a vacuum search of

Room 38 and Room 46.

Q Can you explain in general terms what you did?

A Yes. A vacuum search is specifically an operation designed to collect dust residues specifically for the purpose of finding out if any traces of drugs are present in a place.

We use some specialized equipment which we have designed for this particular purpose.

Q Have you ever used this technique in the past?

A Yes, sir. Actually I played a part in developing the technique, and I have participated in about 22, 23 vacuum searches.

Q Where did you collect these dust samples from, what rooms?

A From the room numbers, sir?

Q Yes.

A From Room 36, excuse me, from Room 38 and 46.

Q And did you conduct an analysis of the dust samples that you collected from those two rooms?

A Yes, sir, I did.

Q And what was the result of your analysis in terms of whether you found any narcotic drugs?

A The dust sample which I collected from the bed-spread in Room 38 contained traces of heroin. The dust

sample from the floor of Room 38 contained traces of heroin.
The dust sample collected from the bedspreads in Room 46
I could not detect any controlled substances. The dust
sample from the floor of Room 48 contained traces of heroin.

MR. FELD: May we have these marked as 132
and 133.

(Government Exhibits 132 and 133 were marked
for identification.)

Q Sir, take a look at 133 and 132 for identification,
and tell us whether you can identify these items.

A Yes, sir, I can identify each one.

Q How do you do that?

A In each case my initials, sample number and
sealing record appears on each exhibit.

Q And can you explain what these contain apart from
these evidence envelopes?

A Yes, sir. This exhibit which is marked 133 con-
tains the filter pads and dust residues which I obtained
from Room 38 in the Bar Harbor Motel. And Exhibit 132
contains the filter pads which I used during my analysis,
the residual dust and, which I obtained from Room 46, the
Bar Harbor Motel.

MR. FELD: Your Honor, we offer 132 and 133.

MR. FEITELL: I object to these as being totally

unrelated to my client and for other reasons that I will open up on cross-examination.

MR. SLOTNICK: I object to it, your Honor. It should not be binding upon John Capra.

MR. LEVENSON: Your Honor, I make the same objection with respect to Mr. Jermain.

THE COURT: Any other objection?

All right, the exhibits will be received.

MR. SLOTNICK: May I ask one question on voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SLOTNICK:

Q Will you look at 39F in this envelope and tell me, is there anything in there?

A Yes. Well, this is marked from another court. The designation 39F, yes, there is, there is a plastic bag which contains a very small vial.

Q Is whatever is in there -- can it be seen by the naked eye, other than the vial? I presume there is something in the vial.

A Yes, there is something in the vial.

Q Is it visible to the naked eye?

A I can see it.

jkb-7

Henderson-direct

2 Q You can? I can't see it.

3 MR. SLOTNICK: You are eventually going to
4 open these, right?

5 MR. FELD: We can open it now.

6 MR. SLOTNICK: I reserve for that time, your
7 Honor, so I can see what is in there.

8 MR. FELD: So that the record is clear, Exhibit
9 132 is contained in a plastic sealed container. I am
10 cutting that open now.

11 I am removing four small plastic bags with various
12 markings on them, each containing certain items.

13 Could we have these collectively marked as 132,
14 these four items, I will separate them, 132A, B, C and D.

15 (Government Exhibits 132A, B, C and D were
16 marked for identification.)

17 MR. FELD: Your Honor, we offer 132 A, B, C
18 and D for identification.

19 MR. FEITELL: Wholly unrelated to my client. I
20 object.

21 MR. FELD: Are they received?

22 THE COURT: I am waiting to see if there are other
23 objections.

24 MR. FELD: I thought counsel had already examined
25 them.

1
2 MR. SLOTNICK: I couldn't see them in the bag .

3 MR. FELD: I am sorry.

4 MR. SLOTNICK: The first and obvious, your
5 Honor, is that there is a little extra slip of paper the
6 Government has on here that should be removed.

7 THE COURT: Well, it will be removed or otherwise
8 dealt with if we have to exhibit them.

9 MR. SLOTNICK: I think it could just be removed.

10 MR. FELD: Your Honor, I am going to do the same
11 thing with 133 for identification which is also in a sealed
12 plastic container. I am removing the contents. And call
13 this 133A, B and C.

14 (Government Exhibits 133A, B and C were marked
15 for identification.)

16 MR. SLOTNICK: My only objection on these
17 your Honor is that they are certainly not binding on my
18 client.

19 MR. LEVENSON: Your Honor, I am going to object
20 to anything connected with Conforti or Sperling as I have
21 done in the past, as being prejudicial and should not be
22 in this trial at all.

23 MR. BLACKSTONE: I join in that, your Honor.

24 THE COURT: All right. Are there other objections?
25 The exhibits will be received.

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Henderson-direct
cross

(Government Exhibits 132A, B, C and D, and
133A, B and C were received in evidence.)

MR. FELD: No further questions.

CROSS-EXAMINATION

BY MR. FEITELL:

Q With respect to the gym bag, did you cut the gym
bag open?

A Yes, I did, sir.

Q When did you cut it open?

A On May 3, 1973.

Q And where did you get the gym bag from?

A I took it from the vault.

Q Could you describe the vault?

A Well, our evidence vault is a large specially
constructed steel vault that is -- I am not sure what kind
of description. We have shelves for storage of evidence
of this type.

Q Is it a large vault?

A It is a large vault, yes.

Q Walk-in type?

A Yes. I'd say it is about perhaps 9 x 20, perhaps
15 x 20.

Q Evidence is kept in there?

2 witness Simmons be stricken as against the defendant Capra
3 in view of the fact that he has not connected the
4 defendant Capra in any of his dealings whatsoever.

5 If your Honor will recollect you gave me leave to make that
6 motion at this time.

7 THE COURT: All right. That is also denied.

8 MR. SLOTHICK: The last and final motion is that I
9 ask your Honor to grant judgment of acquittal as against the
10 defendant Capra in view of the testimony as it has come
11 from the witness stand. It is my feeling that the most
12 your Honor can have after listening to the witness is a
13 reasonable doubt and so he can in his discretion at this time
14 dismiss the matter without allowing it to go to the jury.

15 THE COURT: Denied.

16 MR. MC ALEVY: I would join with Mr. Slotnick
17 and restate what I said to the Court with respect to
18 Mr. Guarino.

19 THE COURT: Same ruling.

20 MR. FEITELL: With respect to certain testimony
21 concerning the February 3, 1972 Rockefeller Center account
22 regarding monies and a bag, I move that all of the testimony
23 regarding that be stricken because my recollection of the
24 testimony, which may be faulty, there is no testimony as to
25 where those materials came from and all we have is a.

police officer who said he saw some money in a dop kit.

It was being held by another officer and the jury is being asked to speculate as to where those materials came from.

Certainly they weren't seen in Dellacava's hands and I doubt the record indicates they were removed from his vehicle, although I stand to be corrected and I will accept it.

The other motion is with respect to all of the testimony dealing with the Sperling phase of the case.

I think it laps over into the Kotteakos problem, though it might not be the same as -- Mr. Slotnick and I may not be referring to the problem in the same context. But I believe there is no indication on this record as respects my client that he was involved in any conspiracy or during the entire year leading up to the advent of Mr. Sperling on the scene and, certainly with respect to Mr. Sperling, no testimony whatsoever that with this advent my client re-emerged in connection with dealings with Conforti, Sperling, et cetera.

So I say there is no testimony in this case regarding my client's participation in the case, conspiracy-wise after the point of, I think, late January 1972. We have some telephone calls leading up to Jack Brown's encounter and after that there is nothing that relates to Dellacava and to allow 13 months to go by with no involvement on Mr. Dellacava's part in any of the actions

1
2 occurring, if indeed any did occur, and I assume that the
3 initial stated conspiracy had a longevity going through the
4 year 1972 and to the third month of 1973, four months,
5 applicable to my client, insofar as there is absolutely
6 no testimony regarding him during that period of more than
7 13 or 14 months, I say all that testimony should be
8 stricken as to him.

9 THE COURT: In that connection, Mr. Feitell,
10 I asked for certain presentations in writing from any counsel
11 who may have them that would help me to consider limiting
12 instructions on this kind of subject when we reach it, if we
13 reach it.

14 I have such submissions from Mr. Blackstone and
15 from Mr. Levenson, Mr. Stone is it? I don't have any from
16 you? I don't know whether you want any. If you want any
17 you'd better let me have it pretty quick so I can think
18 about them.

19 MR. FEITELL: Your Honor, I was making --

20 THE COURT: I understand what you are making and
21 I am denying your motion but I am telling you if you want
22 intelligent limiting instructions that relate to this area
23 of the case, it behooves you to get them in to me so I can
24 consider them and use them.

25 Your motion is denied.

MR. FITZELL: I have a motion with respect to Rule 29A for a directed verdict of acquittal.

THE COURT: That is denied.

MR. LEVINSON: Your Honor, I am going to join in brother counsel's motions with respect to a mistrial with respect to my client, Robert Jermain. I think I have indicated in my submissions this morning the basis for it.

Briefly, I contend there are at least four separate conspiracies here and I think if the Court reads my submission, you will find the basis on which I determine whether or not there is one or more conspiracies and I refer to the Kelly case where the Court indicated that the determinant as to whether or not there is one or more conspiracies would depend on whether there is a single group involved as opposed to a multiple group.

Whether there is an overall general purpose as opposed to an uncoordinated purpose, whether there is a specific goal as opposed to a diffused goal. As we consider the testimony with respect to Sperling, Spada, Capra and Guarino, which occurred, if it did occur, or as is alleged to have occurred in late 1972 and early 1972, in connection with my client Mr. Jermain, he is not heard of in this trial after October of 1971, fully 16 or 17 months before this additional testimony comes in and the Court cannot but

find that his connection was -- he was not related, not connected with the Sparling-Spada relationship.

I think the Court in the Kottos case indicated that each defendant is entitled to a separate trial and I would like to read some language from Kottos if the Court will hear me.

THE COURT: No, I don't want to hear you. What is your motion?

MR. LEVENSON: Number one, for a mistrial based upon prejudice.

THE COURT: Yes, anything else?

MR. LEVENSON: The second motion is that all material brought in by the government with respect to the Conforti testimony and the Sparling testimony, be stricken with respect to my client Jermain.

And, thirdly, I ask that a judgment of acquittal be granted under Rule 29A.

THE COURT: As to the motion to strike or whatever else you formulate in that question, let me make the same observation to you as I just made to Mr. Feitall. If there are any limiting instructions that you desire that will define the situation with respect to your client raising any conceivable issues about withdrawal or non-participation or however you want to call them, and the reason

I am being so vague in soliciting your help is please to write them down and let me consider them in due course. The motion for a mistrial and to strike for acquittal are denied.

MR. BLACKSTONE: Your Honor, I move for a judgment of acquittal or alternatively make a motion for a mistrial raising the Kotteakos issue. I think that Mr. Morris as well as Mr. Harris are in a somewhat different position than the other defendants in this conspiracy issue.

I think the evidence shows that we accept the evidence that Morris and Harris, there were two lines, two chains -- I know the Court doesn't like the use of those terms generally but criticized me on a previous day for using it but I think clearly a chain leading to Mr. Morris and a separate chain leading to Mr. Harris.

The bulk of the government's case, the evidence of the heroin introduced into evidence, most of the trial, was concerned with events in 1971.

Each counsel has its own defense strategy and I think that the strategy which I am certain is in the interests of other counsel, for their particular client, in the case of my own client, substantially injured our defense because in my view some of it, as far as my client, injured him. Injured him because I thought that the jury in

some instances was very unsympathetic to some of the cross examination which was somewhat protracted as far as my client's situation.

Add the fact that all of the tangible evidence was on a 1971 transaction and even that I think the Kottankos problem is squarely here in Mr. Harris' case.

I think the government will argue as I noted in a little memorandum, there is a contact or connection between Harris and Morris and that was an introduction and I assume the government would argue from this introduction, at which time no conspiracy agreement was entered into and, after all, the conspiracy as the government always tells us in these charges is the agreement, the agreement to perform unlawful acts and always in the charges we have the government saying we seldom have a situation where the parties sit down and formalize the agreements.

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t3pm

Well, we know that in the summer of 1970, according to Ramos, the parties sat down. There was such a sitting down, there was such a conference, and we know that George Harris was not a participant in that conference other than the introductions, and we know also that no agreement to perform an unlawful project was entered into at that time.

So therefore I think that particular incident is too attenuated to connect him with all these Morris ventures. And the fact that he is on trial here is actually disastrous to him, with all the evidence that has been adduced here, particularly all the heroin that was opened up and put on the table, there was no seizures in Mr. Harris' case and I don't think the jury can in any way put the blinder on, if the Court agrees with me that there was a separate conspiracy, put the blinders on and forget about all this other evidence, regardless of how the Court would marshal and give limiting instructions.

I think there is the Kelly case, which Mr. Levenson referred the Court to, was a similar situation, where one of the participants in a part of a major securities fraud swindle, he was involved in one of the aspects of the overall event, and the Court clearly told, directed that there should have been a severance. It was required. I think you have the situation here, and I think --

1 THE COURT: Is that what Kelly said that there
2
3 should have been a severance?

4 MR. BLACKSTONE: No, Kelly said several things.
5 I think it said --

6 THE COURT: Did it state that?

7 MR. BLACKSTONE: It said, there should have been
8 a severance or --

9 THE COURT: Or what?

10 MR. BLACKSTONE: Limiting instructions.

11 THE COURT: That is one of the reasons I was
12 anxious that you do your job and give me limiting instructions
13 because you didn't get a severance.

14 All right, go ahead.

15 MR. BLACKSTONE: But I think the Court, even in
16 Kelly, if you read the opinion, was persuaded that there
17 should have been a severance, because they said at the very
18 beginning, there should have been a severance, so I think
19 that from the very early stages of this case, I pointed out
20 to the Court, side bar conferences and before, based on the
21 opening of Mr. Feld, that I thought that there was a problem
22 here and I asked for a severance at that time. So at a
23 very early stage I asked for the severance. Mr. Feld
24 insisted that he was going to connect all this, and his
25 connection is a very tenuous one. I might point out that

jkb-3

1 all these telephone calls that were just introduced, ¹⁰¹⁶ none
2 of them show connection between Morris and Harris. They
3 don't have anything else but that very slender, slim event,
4 which by its terms, where a witness who is present cannot
5 say, somehow, that there was any unlawful project concluded
6 or that Mr. Harris was a participant in that, and from that
7 the Government wishes to have all this evidence produced
8 against him, and they didn't want him severed.
9

10 I think that there is a fatal variance and that
11 Mr. Harris should obtain a judgment of acquittal.

12 THE COURT: That is denied, Mr. Blackstone.

13 Mr. Stone.

14 MR. STONE: Your Honor, I would move at this
15 time first to amend the indictment so far as Morris is concerned
16 and to compel the Government to elect whether they are going
17 to proceed under Title 26 Section 4705(a) which is the
18 conspiracy to violate the order form which was eliminated
19 I believe by Congressional Act in May of 1971.

20 THE COURT: Elect with respect to the conspiracy
21 count?

22 MR. STONE: That is correct. They charge in their
23 conspiracy two conspiracies, one to violate the order form,
24 which was, if my recollection is correct, went out of our
25 statutes some time in April 1971, and was superseded or

1 supplemented by 812, Title 26, which is now the
2 narcotics law. The difference here is one of proof and of
3 course penalties. I don't think the Government can proceed
4 here with two distinct conspiracies. And I think they should
5 be compelled to elect which conspiracy they desire to proceed
6 on. One is the order form conspiracy and the other one is
7 the violation of Schedule 1 and Schedule 2 narcotic drugs.
8

9 In line with that, Morris only is named as a
10 conspirator in September '71 transaction, and October '71
11 transaction, and yet he is charged with conspiring to violate
12 the order form which the Government charges against two
13 other defendants, three other defendants in Count 2. I think
14 this is an unfair burden for Morris to sustain, to be part
15 of a conspiracy --

16 THE COURT: What is this about Count 2 again?

17 MR. STONE: Count 2 charges Morris, in effect,
18 with being the buyer.

19 THE COURT: He is not --

20 MR. STONE: He is not a defendant. He is the
21 buyer. So therefore I think it is unfair to charge him
22 with being in a conspiracy to buy, sell, barter and exchange
23 under that doctrine and at the same time charge him with
24 a conspiracy under the new law under 812.

25 I think the complicated instructions which you

1 would normally give to both statutes would be unduly cumbersome in this particular case and unfair to Morris. I think
2
3 the Government should elect to proceed in one or the other.
4

5 In the alternative, I move to sever. I made
6 that motion before. I think that Morris has sat through
7 this trial and as of October 31, 1971, as a matter of law,
8 the conspiracy as to him ended, yet there was damaging evidence
9 introduced for almost two weeks here, that took place
10 from October 31, 1971, not against Morris, but against
11 other defendants, and when the jury receives a conspiracy
12 charge, you are going to ask them to compartmentalize their
13 thinking so as to try to separate Morris from the other
14 defendants.

15 The only relief here would be the entry of a
16 judgment of acquittal or a mistrial and granting Morris a
17 severance. I respectfully request that those motions be
18 granted at this particular time.

19 THE COURT: All right. I would like Government
20 counsel to refresh my recollection which has never been
21 very clear. At what point is it the Government's position
22 you will or must or may elect as between the two categories
23 of violation, or do you think you need ever elect on your
24 conspiracy charge? How many of you are going to talk?

25 MR. FELD: I will let Mr. Feffer talk.

1
2 MR. FEFFER: Your Honor, there is a procedure
3 which I became somewhat familiar with before, of bringing
4 in a general verdict on the conspiracy count first, and
5 then assuming that it is a guilty verdict to ask the jury
6 to find as to each defendant when that particular defendant
7 entered the conspiracy. That is a procedure which has
8 been utilized, as I understand it, in other cases when you
9 have a conspiracy starting prior to May 1, 1971, and it is
10 an intelligent way of doing it, I think.

11 THE COURT: When has it been done and where has
12 it been approved?

13 MR. FEFFER: I will have to give you the
14 specifics on that, your Honor. I know it has been cited to
15 me on numerous occasions by the Department of Justice in
16 Washington.

17 THE COURT: So your position at this time is
18 that you don't need to elect before a verdict, and that after
19 a verdict if there is a particularization needed, we put
20 a question to the jury.

21 MR. FEFFER: Right. That is correct.

22 MR. STONE: Your Honor, I think that in line
23 with my motion to dismiss, certainly as to Section 4705(a),
24 which is the conspiracy, I call the Court's attention to
25 a Court of Appeals ruling in U.S. vs. Feola and Rosa, where

1 the Circuit Court quoted Crimmins, stating that it is im-
2 possible to conspire to do something that cannot be obtained
3 at all. Now certainly the Courts have agreed that there
4 is no order form available. They have sustained --

5
6 THE COURT: You mean it has been held that
7 it is not possible to conspire to violate 4705(a)?

8 MR. STONE: No, I think it has been held that it
9 is possible to commit the substantive violation of violating
10 26, U.S. Code, Section 4705(a).

11 THE COURT: I asked you has it been held that
12 there can't be a conspiracy to violate.

13 MR. STONE: No, it has not.

14 THE COURT: That is what you are saying?

15 MR. STONE: I am saying in this particular situa-
16 tion that it should be held.

17 THE COURT: Why?

18 MR. STONE: Because it is one of the fictions of
19 our statutory law.

20 THE COURT: Aren't the books filled with conspiracy
21 convictions under 4705(a)?

22 MR. STONE: Most of them are on substantive
23 counts.

24 THE COURT: Aren't the books filled with conspiracy
25

convictions?

3021

MR. STONE: I don't think a conspiracy convicts. I think most of them that I am familiar with, and there are quite a few of them, have held 4705(a) to be a fiction.

THE COURT: Don't stand up and name me a case, Feola or any other good name. If you are going to give heady doctrines like this, write it down on a piece of paper with citations and I will read them. What I mean by heady is something that sounds to me to be patently wrong in light of what I have been sitting here and hearing for eight years or so, but might well be correct. In which event you have to teach me about it.

As to the election thing, I think, Mr. Feffer, you had better get me some information on that in the next day or so so I can know where I stand. At this time I am not positive how we should handle that. I am not positive about a lot of things. But I am denying the motion requiring the Government to elect and I am denying the motion for a severance.

MR. STONE: May it be deemed I made my motions under Rule 29?

THE COURT: Yes, they are denied.

MR. FEITELL: I have a further application.

THE COURT: Yes.

1 jkb-9
2 MR. FEITELL: That is with respect to Counts
3 4 and 5, which as I read them, constitute multiplicitous
4 charges. It seems to me that those counts should be em-
5 braced in a single charge rather than split into two distinct
6 charges, because that is a transaction involving the suit-
7 case, containing heroin and cocaine. It is really a single
8 factual transaction. All the Government did here was to
9 allege two separate crimes regarding that shipment.

10 THE COURT: Well, I think you do cocaine and
11 heroin in one shipment, or allegedly do, it could be two
12 crimes, and if you put in sawedoff shotguns it could be a
13 third. It will go to questions, if we ever reach them, of
14 sanction and so on, not to the validity of the indictment.
15 That motion is denied.

16 Now, how are we going to proceed with the defense?
17 You say you have a witness, Mr. Feitell. Are we going to
18 proceed in some kind of order? Have defense counsel
19 come --

20 MR. FEITELL: We have two witnesses that I know
21 of now, and I think Mr. Slotnick would like to proceed first.

22 MR. SLOTNICK: I have a very short witness who
23 will be connected up by Mr. Feitell's witness. The reason
24 I asked the Court to be allowed to put my witness up first
25 subject to connection is that he has to make a plane back

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2 that they are now bringing into the courtroom the individual
3 centered in that article.

4 THE COURT: What about that?

5 MR. McALEVY: Your Honor, you have instructed the
6 jury not to read the magazine and the papers about it and
7 we had a discussion with respect to that at the side bar
8 and I certainly hope the jury will obey your instructions.
9 If they don't, it is another story.

10 THE COURT: All right. But in any event you say
11 his testimony is necessary and material to the defense?

12 MR. McALEVY: Yes, your Honor.

13 THE COURT: All right. Are we ready now?
14 Who is calling the next witness?

15 MR. SLOTNICK: I am, your Honor.

16 Herbert Sperling.

17 (Jury present.)

18 THE COURT: Good morning. All right, Mr. Slotnick.

19 H E R B E R T S P E R L I N G, called as a witness on
20 behalf of the defendants, being first duly sworn, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SLOTNICK:

24 Q Mr. Sperling, my name is Barry Slotnick and I
25 represent John Capra.

Do you know Joseph M. Conforti, who lived at the 3212 Gagrige Place in the Bronx?

A Yes, I do.

Q Will you tell us how long you have known him and your relationship with him?

A I first met Mr. Conforti I believe in December of 1971 or January of 1972. I was partners with him in a pizza parlor.

He also did handiwork around my place, house painting and fixing things.

Q Were you in any other business with Mr. Conforti other than the pizza parlor?

A No, never.

Q How long were you in business with Mr. Conforti in the pizza parlor?

A Three or four months.

Q Do you remember those months? Give the month and the year.

A It was 1971. I believe it was July, August, September and part of October.

Q You terminated your business with Mr. Conforti when?

A Some time in October of 1971.

Q Will you tell us the facts and circumstances re-

garding your business with Mr. Conforti in the pizza parlor?

A He came to me with an idea that he wanted to be partners in a pizza parlor and we each put up half the money and --

Q You say you each put up half the money?

A Yes.

Q How much money did you put up?

A I believe the sum total I put up was 7 or 8,000 dollars.

Q How much money did he put up?

A An equal share.

Q Continue, I am sorry.

A We had this business and I decided to terminate it with him because of a few incidents that happened. One of them being I discovered that he was masturbating into the food that he was sending out to customers.

Also, I was a little afraid of him because he had a very hot temper and I learned that he was a little unbalanced one time, there was a problem with money and he threatened to chop my fingers off if he found out I took the money.

Q You were in fear of Mr. Conforti?

A Yes, that is correct.

Q At any time during your relationship with

Mr. Conforti did you ever meet with him, John Caruso and John Capra and Leo Guarino together at one time at one place in one area at any time during your relationship with him?

A First, counsellor, I don't believe I know a John Caruso. I am not sure I know John Caruso.

Q To the best of your recollection have you ever met an individual by the name John Caruso?

A No, not to the best of my recollection, never.

Q Did you ever meet or know of an individual by the name of Johnnie Hawks?

A Not to my knowledge. If you could show me a picture I can, you know, give you a firm yes or no.

Q We don't have photographs.

A No photographs? I don't believe so.

Q Did you ever meet with Mr. Capra, Mr. Guarino and Mr. Conforti together in one place at one time and have a discussion?

A All of us together?

Q Yes.

A NEver.

Q Specifically, did you ever sit at a restaurant table at the Stage Delicatessen with Mr. Capra, Mr. Guarino, Mr. Conforti, either together -- face together?

A Never.

2 Q Do you know the name Jack Spada?

3 A Yes, I think I do. Yes, I do.

4 Q Did he ever work for you as a narcotics mixer?

5 A Never. I am not in the narcotics business.

6 Q Did Mr. Conforti ever work for you, when I say
7 Conforti, I mean Joseph Conforti, ever work for you as a
8 mixer of narcotics?

9 A No, he is a liar.

10 Q Did Joseph Conforti mix narcotics in your house?

11 A Ridiculous. Never happened.

12 Q Did you ever have an occasion to mix narcotics
13 in your house?

14 A Never, I am not in the narcotics business.

15 Q Mr. Sperling, between March and April of 1973
16 where were you living?

17 A 2868 Lee Place, Bellmore, New York.

18 Q Bellmore, New York. And did you have a basement
19 in that house?

20 A Yes, there is a basement there.

21 Q And you had bedrooms, living-room, dining-room?

22 A Yes, complete house.

23 Q Do you know whether Federal agents were ever
24 in your house?

25 A Yes, Federal agents were in my house.

Q Do you know whether Federagents ever vacuumed out any area of your house?

MR. FEFFER: Objection, your Honor, unless he was present.

MR. SLOTNICK: I am asking if he knows.

THE COURT: From observation.

MR. SLOTNICK: That is correct, your Honor.

THE COURT: All right.

MR. FEFFER: Whether he was present.

THE COURT: I will allow it.

A From my personal observation, no.

Q Did you ever ask Mr. Conforti to write his phone number for Mr. Caruso, -- well, you don't know Mr. Caruso, for Mr. Guarino?

A Never.

Q Did you ever give Mr. Conforti's phone number to anyone sitting at this defense table?

A No, never.

Q Did Mr. Conforti ever discuss either Mr. Capra and/or Mr. Guarino with you at all?

A Never.

Q Did you ever see Mr. Conforti and Mr. Capra at one place, at any one point in time?

A Never.

Q Mr. Sperling, do you know if my client is a shylock?

THE WITNESS: Do I have to answer that, your Honor?

MR. PEPPER: We have no objection, your Honor.

THE COURT: Yes.

A I know the Government doesn't have an objection, but I am not used to --

Q I am Mr. Capra's lawyer and I am asking you that question. Do you know whether my client is a shylock, please answer the question.

A Yes, he is. Yes, he is, he is a shylock.

Q How do you know that, Mr. Sperling?

A He loaned me money.

Q When you say he loaned you money, during what period of time as you recollect?

A Various times when I did had in my bookmaking business, it would be around, in 1972.

Q And when he lent you money, did you pay him back?

A Yes, positively.

Q Did you pay him back that money with interest?

A Yes, I did.

Q Was it more than 6 per cent a year?

A No, I don't think so. I think it was about

1 a half a point. I never kept the money for a year.

2 Q You mean a half a point a week?

3 A Yes. I usually needed it for a week or two,
4 if I had a big hit, a bad week on sports, or something
5 like that.

6 Q Well, you know, that is 2 per cent a month?

7 A I am not too good at banking figures, only
8 bookmaking figures.

9 MR. FEFFER: We will accept that, your Honor.

10 Q How long have you known Mr. Capra?

11 A Oh, I'd say about seven years.

12 Q Have you seen him socially?

13 A Positively.

14 Q Would you say that during that period of time you
15 knew him well?

16 A Yes, I know him very well.

17 Q Mr. Sperling, did you ever send Mr. Conforti
18 to your home in order that he might take \$30,000 in cash
19 to you from your wife's closet?

20 A Never happened. In fact, at my trial, the woman
21 that he claims let him in the door testified that it didn't
22 happen.

23 MR. FEFFER: Objection, your Honor.

24 THE COURT: Sustained. The jury will disregard
25

that.

Q Well, did you ever send -- without telling us what anybody else testified to or said, did you ever send Mr. Conforti to your home in order that he might take \$30,000 out of your wife's closet and bring to you?

A Never. Never happened.

Q Did you ever call Mr. Conforti and ask him to be ready to mix narcotics for you?

A Positively not. I am not in the narcotics business.

Q Do you know whether on April 7, the 10th or the 13th of 1973, you called Mr. Conforti in the morning?

A I'd be lying if I tell you -- I may have called him on one of those days to come and fix a hinge in the house, on one of the cabinets.

MR. SLOTHICK: May I have these marked, your Honor.

(Defendants Exhibit AE was marked for identification.)

(Defendants Exhibit AF was marked for identification.)

Q Did you ever pay Mr. Conforti \$4000 for mixing narcotics?

2 A Never.

3 Q Would you tell the jury how you test for heroin?

4 A I haven't got the slightest idea.

5 Q Mr. Sperling, did you ever tell Mr. Conforti
6 that you bet \$500 on a football game?

7 A That is possible. It was common knowledge. I
8 am a big bettor and a bookmaker. Everybody knows that.

9 Q Prior to your appearing in Manhattan, did I or
10 anyone else speak to you about your coming here today and
11 testifying?

12 A Never.

13 Q By the way, where do you live now?

14 A Where do I reside?

15 Q Yes.

16 A Federal penitentiary in Atlanta, Georgia.

17 Q Have I or any defense counsel or defendant
18 promised you anything in return for your testimony?

19 A Positively not.

20 Q Have we promised you any money?

21 A Positively not.

22 Q Have we promised you any protective custody?

23 A No.

24 Q Why are you testifying today?

25 MR. PEPPER: Objection, your Honor.

THE COURT: Sustained.

Q You say you are presently in prison, is that correct?

A That's correct.

Q And where are you in prison at?

A Federal penitentiary in Atlanta, Georgia.

Q What was your sentence?

A Natural life.

Q Did Mr. Conforti ever indicate to you that he would receive a lot of money if he testified against you?

A He most certainly did.

Q Would you tell us the facts and circumstances surrounding that?

A We were in West Street, after our initial arrest, and he had been on the telephone, he had come off, we went and eat together, and he had told me that he knew where he can get a lot of money if he told a few small lies, and that those were his intentions. He also told me that he didn't have to worry about being in too much trouble with any narcotics dealings because he had taken care of his partner, who I assume it was Louis Millette, it come out at our trial, I believe he killed him.

MR. SLOTHICK: Your witness.

MR. MC ALEVY: Your Honor, may I proceed?

1
2
3 MR. SLOTNICK: May I have the last question
4 read?

5 THE COURT: I believe the substance of the
6 prior question was, did anybody ask you to lie, and I think
7 the answer is yes, and I think at the time we suspended
8 for our conversation you were about to ask who.

9 MR. SLOTNICK: That is correct.

10 BY MR. SLOTNICK:

11 Q Could you tell me who and when?

12 A The day I was arrested, 57th Street, the Nar-
13 cotic Bureau Building, U.S. Assistant Attorney Velie and
14 Mr. Stewart Stromfeld of the narcotics agency, who is present
15 here, interviewed me, and Mr. Velie told me, "You know
16 your mother's arrested, she is going to jail, you are going
17 to go away for the rest of your life. Do you want to help
18 yourself, do you want to tell us anything about anybody
19 that is out there arrested also, or about anybody else?"

20 And the implication was clear that he didn't
21 want --

22 MR. FEFFER: Objection, your Honor, to what
23 the implication was.

24 THE COURT: Sustained. The jury will disregard
25 that.

The question put to you, Mr. Sperling, is did anybody ask you to lie, and you had said yes. Now will you continue.

A He asked me if there was anything that I wanted to tell him about anybody else that was arrested or anyone else in the whole world.

Q What was your response?

A No. I said, "You do your job and I do my job. My job is to keep quiet and not make up stories."

Q Was there any other occasion when this happened?

A To me directly?

Q To you directly.

A Yes, when I was first arrested, Agent Stromfeld said, if I pleaded guilty, he felt maybe they could make my mother walk out and I would only get fifty years.

Q Did your mother stand trial with you?

A She did.

MR. FELD: Objection.

THE COURT: Well, I will ask the jury to disregard that answer.

Why is the mother's trial relevant here, Mr. Slotnick?

MR. SLOTNICK: She went to trial with him. It is not hearsay. He observed it.

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1
2 THE COURT: Mr. Feffer, are you asking about a
3 conviction?

4 MR. FEFFER: Yes, your Honor.

5 THE COURT: All right, go right to it and see
6 whether they will be allowable.

7 Q Did you enter a plea in Counts 1 through 6 of that
8 indictment?

9 A I did.

10 Q Did you enter a plea on Count 17 of that indict-
11 ment?

12 A I did.

13 Q How did you plead?

14 A Guilty.

15 Q Did Count 17 charge that the defendants Joseph
16 Valachi, Ralph Wagner, Herbert Sperling and --

17 MR. SLOTNICK: I object to this question.

18 THE COURT: Wait a second.

19 MR. SLOTNICK: You have gone far enough, Mr. Feffer
20 and I object to an interjection of Mr. Valachi's name into
21 this case which is a little more prejudice toward the right
22 and I don't think it is necessary.

23 THE COURT: I don't much care for the idea of a
24 little more prejudice. If there was any prejudice it is my
25 fault and I have been trying to see to it that there is none

and I will instruct the jury that the list of names, whatever it could mean as to Mr. Sperling, is of no interest to us here, specially recalling that this relates to 1959?

MR. FEFFER: That is correct.

THE COURT: Disregard the list of names. Just ask Mr. Sperling about himself, unless you have names that you claim are going to be relevant to this case, in which event come to the side bar and tell me about it.

MR. FEFFER: Surely, your Honor.

Q Did Count 17 --

MR. SLOTNICK: I move for the withdrawal of a juror.

MR. McALEVY: I would like a side bar with reference to this on the basis of the statements made by Mr. Feffer.

THE COURT: No, I don't think a side bar, but we can take that later. Leave that for a motion later. Please proceed.

Q Did Count 17 charge you and the others with conspiracy to violate the Federal narcotic laws?

A I believe it did.

Q You entered a plea of guilty to that?

A Yes, I was guilty.

Q Did you go to jail on February 19, 1960 or there-

1 ardub

Sperling-cross

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2 abouts?

3 A Yes.

4 THE COURT: Mr. Feffer, maybe we'd better come to
5 the side bar.

6 (At the side bar.)

7 THE COURT: First of all, I'll take the things I
8 was going to postpone.

9 MR. SLOTNICK: The introduction of Joseph Valachi's
10 name in this case, a name not unknown in this community is
11 a calculated attempt to prejudice the jury and at this point
12 I think that I would, since I called this witness, request
13 that I be given the withdrawal of a juror and a mistrial.

14 THE COURT: All right. The jury has its
15 instructions. That is denied.

16 MR. McALEVY: Just, with respect to Mr. Feffer
17 injecting the name of the other co-defendants and Mr.
18 Valachi, I feel that he is absolutely --

19 THE COURT: What other co-defendants?

20 MR. McALEVY: He mentioned about four or five
21 names.

22 THE COURT: Are any of them familiar to us here?

23 MR. McALEVY: Judge, that is not my point.

24 THE COURT: I am asking you to answer my question.

25 MR. McALEVY: I don't know them, Judge.

1
2 MR. SLOTNICK: May I, your Honor?

3 THE COURT: No you may not interrupt. Let me
4 finish with Mr. McAlavy.

5 MR. McALEVY: I was under the impression that on
6 cross that the United States would bring out the fact
7 whether or not a man was ever convicted of a crime and what
8 the crime was and perhaps what the sentence was.

9 I don't think that there is any proviso to bring
10 out who the defendants there were and I think that this is
11 absolutely a deliberate attempt to prejudice this jury. I
12 think it was uncalled for by Mr. Feffer.

13 I would join with Mr. Slotnick and ask for a
14 mistrial and I take it that the Court will deny that and I
15 would ask that Mr. Feffer now certainly be instructed to be
16 very guarded in the future, your Honor, concerning this
17 matter and akin matters to it.

18 MR. FEFFER: May I respond?

19 THE COURT: You say you know the names?

20 MR. SLOTNICK: Only Richard Wagner's name was --

21 MR. FEFFER: Ralph Wagner.

22 MR. SLOTNICK: Ralph Wagner was in an investi-
23 gation many years back with regards to a disappearance or
24 something of that sort and the name may be familiar to some
25 of these jurors because some of them look old enough to have

an interest in newspapers at that period of time.

THE COURT: I am old enough for other things and that name doesn't mean anything to me.

MR. LEVENSON: May I interject?

THE COURT: Wait a second. Any other things?

MR. SLOTNICK: Just I think, your Honor, since we have shown association between Mr. Sperling and my client saw an association with Joseph Valachi, that rubs off rather badly on my client --

THE COURT: Let us not repeat. I understand your problem and I'm not saying the problem is insignificant or trivial. I am saying in the context of this whole case with instructions to the jury, I do not regard it as even remotely approaching the granting of a mistrial. But you made your record and you need make it only once.

MR. SLOTNICK: I thought you disregarded it as complete trivia. That is the impression I got.

MR. LEVENSON: My objection --

MR. FEITELL: I join in the application and I would also point most respectfully to your Honor, I think that the curative instructions that you attempted to give did not really satisfy -- are not very curative.

THE COURT: Wait a minute.

(In open court.)

1 basis to me for going ahead and doing it.

2 So if your self-serving protestations of decency
3 are going to help you with anybody that reads this record,
4 you have now accomplished that feat.

5 MR. FELD: Thank you, your Honor.

6 THE COURT: Three and a half minutes,
7 Mr. Blackstone.

8 (Recess:)

9 THE COURT: All right, are we ready for the jury?

10 MR. McALEVY: Judge, that writ has been served.

11 THE COURT: All right.

12 (Jury present.)

13 THE COURT: We took the occasion of your recess
14 to discuss a variety of things that weren't immediately
15 important, but let me take the occasion of your return to
16 remind you that the question which I held was an improper
17 question by government counsel, listing some names relating
18 back to 1959, has been ruled improper, and let me remind
19 you that those ancient circumstances and those names have
20 nothing whatsoever to do with this case, and you should
21 follow that.

22 Now, do you want to proceed, Mr. Feffer?

23 MR. FEFFER: Thank you, your Honor.

24 (Continued on page 3365.)

25 ***

1
2 Q HE was not involved in narcotics?

3 A No.

4 Q Pat Vecchio, do you know him?

5 A No.

6 Q NEver heard of anyone by the name of Pat Vecchio?
7 who used to hang around with Nicky Cucciniello?

8 A Not that I recall. If you show me a picture I
9 may know him.

10 Q Do you know Bobby Jermain?

11 A I don't think so.

12 Q The fellow sitting right here?

13 A No.

14 Q Never seen him before?

15 A Never. Wait a minute, I am lying. I did see
16 him in West Street when we were arrested. I remember now.

17 Q Do you know Beansy?

18 A No. Beansy?

19 Q The gentleman fifth over with the glasses, right
20 here (indicating).

21 A No. I saw him in West Street when we were
22 arrested too. I don't know him.

23 Q Do you know where Diane's Bar is?

24 A Diane's Bar?

25 Q Yes.

SOUTHERN COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-1580

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2 THE COURT: All right. I do wish you to be honor-
3 ed, but more than that, I would like to try to make it a
4 correct charge to the jury, so I want to be sure I under-
5 stand what your view is.

6 MR. MC ALEVY: I would request that you not
7 marshal the evidence, your Honor.

8 THE COURT: All right, Mr. Feitell.

9 MR. FEITELL: I am against marshalling too, except
10 with respect to the supplemental requ sts of charge that
11 I submitted to your Honor.

12 THE COURT: Well, I will get to that.

13 MR. FEITELL: Which deals with that period between
14 February '72 and April '73.

15 THE COURT: I am going to deny your requests
16 as given because I think it misstates -- that is too strong
17 a word -- I think it overstates the evidence and leaves
18 out a contention that the Government could make, but we will
19 get to it. Except for that, you join in the view that
20 there should not be marshalling?

21 MR. FEITELL: Yes.

22 THE COURT: Okay. Mr. Levenson?

23 MR. LEVENSON: Your Honor, I request that there
24 be some limited marshalling with respect to my client as
25 follows: That you instruct the jury that there is no

1 evidence, and I don't think there is any evidence, with
2 respect to my client entering any conspiracy prior to
3 February or March, and that is important, February or
4 March of 1970 and the only testimony that has been adduced
5 by the Government with respect to that date was testimony
6 by Mr. Ramos, and I think you will find it in the record,
7 and that any evidence adduced at this trial prior to that
8 date cannot be used against my client.
9

10 Secondly, I request that any evidence brought
11 out dealing with periods after November 1, 1971 may not be
12 used against my client. I think that was the date that
13 the last evidence of any involvement in this conspiracy
14 by my client was brought forth. I think as a matter of
15 fact November 1st is a little late. It should have been
16 October 20, I think.

17 But at any rate I will accept November 1st.

18 I ask that the Court make that instruction.

19 I will also request that a charge with respect
20 to multiple or single conspiracies be made but I don't
21 think that is your question at this time.

22 THE COURT: Well, I will charge that they have
23 to find the conspiracy alleged or acquit.

24 MR. LEVENSON: Well, I am also going to request
25 that they can find either one or multiple conspiracies

1
2 and if they find more than one conspiracy, evidence
3 brought forth as to members of a conspiracy of which one
4 of the defendants is not a member or not found to be a
5 member cannot be used against that individual.

6 THE COURT: Well, let me see that request when
7 you get it ready.

8 MR. LEVENSON: All right.

9 THE COURT: I am not going to give you what you
10 ask for because it leaves things out, such as the rule
11 about withdrawal and what a jury may or may not infer.

12 I am willing to give it in terms of what the de-
13 fendant Jermain argues, and I will give it briefly in those
14 terms. But I am not going to instruct the jury in his case
15 that they may not consider evidence after November '71,
16 because I think that would be erroneous.

17 MR. LEVENSON: Well, what about the earlier date?

18 THE COURT: Same thing applies there. It is not
19 the law that the earliest date of a participation in a
20 conspiracy is necessarily the first day of his explicit
21 appearance in the evidence. That is not the law.

22 Again I will tell them that is your argument.

23 All right. But that in general would be my
24 reaction to that.

25 And I take it you don't want me to give a

1
2 detailed account of all the evidence which I assume either
3 either Mr. Feld or Mr. Feffer may be willing to give the
4 jury in their summation.

5 MR. LEVENSON: No, I definitely don't.

6 THE COURT: Mr. Blackstone.

7 MR. BLACKSTONE: Your Honor, Mr. Levenson briefly
8 touched on the point of whether his request for a separate
9 conspiracy -- I am not clear, I don't think the Court
10 has stated whether or not it wishes, it intends to charge
11 that the jury must find a single, continuing conspiracy
12 or whether the jury may find lesser conspiracies. If the
13 Court could advise me on that, then I will know the shape
14 in which I --

15 THE COURT: My disposition, subject to what I
16 hear in the rest of this discussion, is to charge that there
17 is one conspiracy alleged and that is the one that has to
18 be proved, simply that.

19 MR. BLACKSTONE: Yes. Well, as the Court knows,
20 I think I have already excepted to that in my motion at
21 the close of the Government's case, and I object to such a
22 charge if it is charged. I think it substantially injures
23 my client.

24 THE COURT: I don't think it injures him at
25 all because then I will tell them whether he is a member

of that conspiracy is a separate question.

MR. BLACKSTONE: I think it does injure him, but I won't develop that right now.

THE COURT: Okay.

MR. BLACKSTONE: I am asking for marshalling to the extent as indicated in my memorandum --

THE COURT: Just the time business?

MR. BLACKSTONE: Yes. That there is no evidence of any Harris participation, any illicit activity subsequent to December of 1970. And I think that the particular wording, of course, is something I haven't worked out, but I think it ought to be pointed out essentially that the number of transactions which occurred in '71 -- because I am not sure that the jury has heard many dates, and I think that a lot of evidence that was introduced occurred in '71 and it should be made clear to the jury that all of these evidentiary items that were introduced or not part of, were introduced and were involved in activities that Mr. Harris -- there is no evidence that Mr. Harris participated.

THE COURT: Either you want me to summarize the evidence against Mr. Harris or you don't want me to summarize. If you do want me to I will consider doing that.

MR. BLACKSTONE: Yes.

THE COURT: And then the rest is for the jury.

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2 MR. BLACKSTONE: All right.

3 THE COURT: But I had not thought it useful,
4 and so far nobody else wants it, to be through a summary,
5 which I assume they will get from the Government, and in
6 a different version from you.

7 MR. BLACKSTONE: Let me understand --

8 THE COURT: I thought I ought to give them the
9 law and your claims, and not resummairize.

10 MR. BLACKSTONE: In other words, what your
11 Honor will accept is a simple statement, will tell the jury
12 that there is no evidence adduced that Harris was involved
13 in any activities in 1971 and that, or following December
14 1970, and let it go at that?

15 THE COURT: I am not sure. I want to hear from
16 the Government on that. I think the Government perhaps
17 claims some benefit from the continuation theory and
18 from the introduction of Morris and perhaps other things.
19 I have to check their view on that, because I want to hear
20 the opposed contentions.

21 MR. BLACKSTONE: I would be satisfied with
22 something along those lines.

23 THE COURT: All right. These are just for my
24 guidance and I will do the best I can, with your opposing
25 views.

1
2 But I probably, unless you rethink it and
3 insist on it, I probably won't give a full or anything
4 like a full summary of the evidence. Understand?

5 MR. BLACKSTONE: Yes.

6 THE COURT: Now as to your client, Mr. Stone?

7
8 MR. STONE: Your Honor, I am against marshalling
9 of evidence as a legal principle with every case and
10 especially so in this case. I think that as far as Mr.
11 Morris' termination of his alleged conspiratorial activity,
12 you could put in, in the course of your charge, that one
13 conspirator is bound by the acts and declarations of another
14 conspirator until the end of the conspiracy.

15 THE COURT: Or until he gets out of the --

16 MR. STONE: Or until he gets out, which I believe
17 is the charge which you would probably put in, give or
18 take a word here or there. I would ask at that point you
19 put in that undisputed testimony that Morris was arrested
20 on October 31, 1972, '71, and as a matter of law, as to
21 him the conspiracy ended.

22 THE COURT: I don't want to be excessively
23 agreeable, but I think that is correct, and I would be
24 disposed to do that. I realize there is room for an
25 argument the other way, but I think I would charge on this

record that as a matter of law his participation ends with his arrest and that evidence of other people's acts and declarations after that may not be used against him.

Now I would like the Government's views on all of these.

Let me put you some specific questions: As to the four defendants who don't want any marshalling at all, you may have a different view, but all I am going to ask you is, do you think it is erroneous to abide by their wishes?

MR. FEFFER: I think, your Honor, that contrary to what defense counsel have said, that marshalling of the evidence from the Judge can be helpful to a jury, especially when they are clouded very heavily with the Government side and the defense side. That is just my own personal impression. However, I would say this, that if for example you are going to say that the defendant Jermain takes this position, obviously we would want you then to state what the Government's position is with respect to it.

THE COURT: You had better write it out and give it to me tomorrow.

MR. FEFFER: I am not sure.

1
2 THE COURT: He has told you that his position
3 is that there is no evidence as to him before February
4 or March of '70 and none after November '71, and that there-
5 fore any acts and declarations of other people or other
6 things that went on before or after those terminal dates
7 should not be considered with respect to Mr. Jermain.
8 Is that a fair summary?

9 MR. LEVENSON: That is correct, your Honor.

10 MR. FEFER: Your Honor, that would be directly
11 opposite to what the law is. I felt the law was very
12 clear that unless there is some evidence of withdrawal,
13 that everything that happens afterward is binding on that
14 defendant.

15 THE COURT: Well, there is a thing that they have
16 called a presumption. In any event, I am not asking you
17 what your position is so much on the law. I will tell them
18 about termination. I am reluctant to use the notion of
19 a conspiracy presumed to continue because I think that is
20 in the process of getting a new look. I am inclined to
21 charge a jury that if a man is once found in a conspiracy,
22 they may find he stayed in it till there is evidence he
23 got out, not that he is presumed --

24 MR. FEFER: That is fine.

25 THE COURT: I will indicate that. But when I

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2 say I want a statement of your position, I mean I want your
3 help with a statement of your evidentiary contentions.
4

5 MR. FEFFER: Based on what you just said, as
6 to what you are going to charge as to the law, I think that
7 giving Mr. Jermain's contention would work against him.

8 I mean if you are going to state point blank that a person,
9 once he joins the conspiracy, and not use the word presume
10 but use the language you are going to use, that should be
11 all that should be said.

12 THE COURT: It is not all I am going to say,
13 so if you want to formulate a pointed response to Mr.
14 Levenson's argument, you ought to do it. Let me ask you
15 two questions. Let's not sort of converse in general.

16 Do you agree that there is no evidence in this
17 record, affirmative evidence as to Jermain?

18 MR. FEFFER: Yes.

19 THE COURT: Outside the dates that Mr. Levenson
20 gave?

21 MR. FEFFER: Not with the dates that he put forth.
22 The date of Ramos' arrest I believe was November 10, 1971.
23 He was present at his house when he was arrested. So
24 from November 10 on there is no evidence --

25 THE COURT: Why don't you and Mr. Levenson see

1
2 if you can agree on that date.

3 MR. LEVENSON: I will agree on it, I think
4 it was November 11th.

5 MR. FEFFER: We would have no objection, your
6 Honor, to just merely stating that after November 10th the
7 Government did not adduce any additional evidence or any
8 evidence against Mr. Jermain.

9 THE COURT: All right. So you rely on the rule
10 that the jury may find he stayed in.

11 MR. FEFFER: Yes.

12 THE COURT: But the jury doesn't have to find
13 that.

14 MR. FEFFER: No.

15 THE COURT: And Mr. Levenson wants to argue
16 that he got out. I am going to leave that to the jury.

17 MR. FEFFER: He can argue that.

18 THE COURT: Unlike the case of Mr. Morris, who
19 I am going to tell as a matter of law, he ends October
20 31, '71.

21 MR. FEFFER: There may be a slight problem
22 with that, because -- just because a defendant is arrested
23 doesn't necessarily mean he is out of the conspiracy.
24 For example, Jermain was arrested in May of '71 and
25

evidence came in after that.

MR. FELD: The reason is that Mr. Morris was in jail, and we have no evidence that he was participating in this conspiracy while he was in jail, but the mere fact that he was arrested --

THE COURT: I am going to say arrested and confined. Is there an objection to that?

MR. STONE: I don't think that is a complete accurate statement, your Honor. I think it would be a little prejudicial, a little fair in another sense. He was arrested and subsequently released on bail, subsequently convicted and his bail remanded.

THE COURT: How long was he out?

MR. STONE: I believe about eight months, seven months.

THE COURT: I have misunderstood the evidence. I am not sure why he should get a charge as a matter of law, then.

MR. STONE: He certainly was convicted shortly thereafter, about seven months.

THE COURT: Look, I can't play games with the jury. Either I say he was arrested and confined, and I let it go at that, or not. But I am not even sure that is fair if he was out, he could have been participating.

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3 MR. STONE: There has been a suggestion by
4 another eminent, or eminent attorney, that in that case
5 I believe there is a double jeopardy charge, although I
6 have never heard of a double jeopardy charge to the jury.

7 THE COURT: Well, it is an eminent suggestion,
8 but let's stay on the subject we are talking about, okay?

9 MR. STONE: I will follow the suggestion.

10 THE COURT: It is overruled. Now what about
11 this, it seems to me I can only give you the same charge
12 I am giving to Mr. Jermain and to Mr. Harris.

13 MR. STONE: EXcept, your Honor, at one point you
14 did charge the jury that Mr. Morris was arrested on October
15 31 and that the evidence should not be binding on him, and
16 I made that motion four or three times and you granted
17 it two or three times during the course of the trial.
18 So I think that I was bound into the position. At no time
19 did the word confinement come up until just now. And
20 I have never used the word.

21 THE COURT: I think I did say that, didn't I?

22 MR. FEFFER: Yes, your Honor.

23 THE COURT: I think it is probably erroneous,
24 but it may be an error with which we are stuck. What do
25 you say?

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3 MR. FEFFER: Your Honor, we would have no
4 objection with respect to Morris saying that there was no
5 evidence adduced after his arrest at that time, similarly
6 with Jermain and with George Harris.

7 THE COURT: No, no.

8 MR. FEFFER: But on the question of law --

9 THE COURT: Mr. Stone reminds me and I think he
10 is correct that I have gone further in talking to the jury
11 and said that they must not consider other people's acts
12 and declarations against him after that.

13 MR. FEFFER: That is correct.

14 THE COURT: I will take the blame. But I don't
15 remember it being clarified on this at the time, so I
16 think we are all stuck with it. I don't think it is
17 substantial impact on you that I would lie awak overnight.

18 MR. FEFFER: We will accept the representation
19 you made to the jury and leave it at that.

20 THE COURT: I am going to repeat it though, but
21 I am leaving out the reference to confined. In this case,
22 in the circumstance of this case, it cuts off with him
23 October 31, '71.

24 MR. FEFFER: No objection to that.

25 THE COURT: All right. And then as to Mr. Harris,

1 I would have the same thought for you, Mr. Feffer. Do you
2 agree with Mr. Blackstone's presentation of the evidentiary
3 picture, as to the dates?
4

5 MR. FEFFER: December of 1970, I believe.

6 THE COURT: It ends December 1970.

7 MR. FEFFER: Not that it ends December 1970,
8 but that the last evidence that was adduced at this trial --

9 THE COURT: Yes. In other words, you read Mr.
10 Blackstone's memo and you do not say it is inaccurate.

11 MR. FEFFER: In terms of the dates, your
12 Honor, it is accurate.

13 MR. FELD: The dates are all right.

14 MR. FEFFER: Just the dates.

15 MR. FELD: Our position --

16 MR. FEFFER: He knows that. We are not saying
17 as a matter of law, with respect to Harris, that he is out of
18 the conspiracy at that time. We are saying that there is
19 no evidence following December of 1970 that has been
20 adduced against him and the jury can find --

21 THE COURT: I am not going to tell the jury
22 he is out as a matter of law. But I am going to tell them
23 that it is up to them to decide whether he is out as a
24 matter of fact and I am going to let Mr. Blackstone argue
25 his way, and Mr. Levenson, and you argue your way. Mr.

Stone doesn't have to argue because I am ruling that as a matter of law. Understand?

MR. FEFFER: Yes, your Honor.

THE COURT: Okay. Now as of now, let's be clear, it is likely that unless somebody has second thoughts overnight or over the weekend, that they had better give it to me in a hurry. I am not going to give you a 10, 20 page summary of the evidence against any of these people, but just a couple of sentences on each to state this issue, and I am going to let you argue it. I understand you are in disagreement with that, Mr. Feffer, but you are advised what I am doing and you will have to take care of your thing in summation.

MR. FEFFER: Fine.

THE COURT: Now I think in a five count indictment, in a case that has gone on for several weeks, if the jury means to be intelligent, they ought to at least have the indictment in front of them, so I want to be sure there is a copy sent in to the jury room. I will tell them the indictment is not evidence.

Now let's go through the requests. I will start in order with the Government's.

Request Number 1 is granted. I will read it in installments. By the way, again, if you have objections

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3 to anything I am granting, please stand up and tell me
4 about them.

5 MR. SLOTNICK: At the time you do it or after?

6 THE COURT: Why don't you do it at the time I
7 do it so we can get through when we are through.

8 Request Number 2 is granted in substance. Like-
9 wise Request Number 3.

10 Request Number 4 is granted in substance in
11 the sense that I will describe the statutory setup to the
12 jury. I will not put in the business about a substantial
13 and detrimental effect on the health and welfare of our
14 people.

15 Request Number 5 is granted --

16 MR. STONE: Are you going to charge them both
17 laws of conspiracy, 4705 and 812?

18 THE COURT: Is there any difference for our pur-
19 poses between them?

20 MR. STONE: One of course is the order form
21 stipulation and the other is the plain conspiracy as amended.
22 I think it becomes awfully complicated for the jury
23 when you add another statute for their consideration, another
24 explanation.

25 I think it is overburdensome and unfair to

the defendant.

THE COURT: Not really because I have to do it under the substantive counts anyhow which I am going to follow the Government's views on and give first so that --

MR. STONE: I would object to that charge in the conspiracy count as to Morris.

THE COURT: On what ground?

MR. STONE: On the grounds that I think it is unfair and cumbersome for the jury to understand. You are now asking them to determine two different statutes, one, the old narcotic laws and one the new narcotic laws, and when they see a Congressional change in the middle of an indictment, I think that they will indulge on too many presumptions.

THE COURT: I will make it easy for them and tell them they are both about illegal selling of narcotics, because that is really what the statutes are about.

MR. STONE: That is correct, but it depends on how you treat the order forms situation.

THE COURT: I will treat it lightly unless you feel strongly about it.

MR. LEVENSON: Are you going to ask for a specific verdict?

THE COURT: As of now, I really don't see any

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2 need for it. I have thought about it overnight. And
3 it seems to me that the substance of this conspiracy,
4 as it is charged, notwithstanding the change in the law,
5 as it is charged -- I am not talking about what the jury
6 is going to find, is quite unchanged over the course of
7 the statutory change. Before May 1, '71, if the jury were
8 to agree with the Government, they would find that there
9 was selling of heroin without worrying about order forms,
10 and after May 1, '71, they would find there was selling
11 of heroin without not worrying about order forms. And
12 I must say --

13 MR. LEVENSON: The penalties are different.

14 THE COURT: The penalties go to the question
15 of sentencing, and there it seems to me --

16 MR. LEVENSON: There is a mandatory sentence on
17 one, and not on the other.

18 THE COURT: That is easy. If I am left with an
19 ambiguity on whether I am to impose a mandatory sentence
20 or a non-mandatory sentence, I will impose a non-mandatory
21 sentence.

22 MR. SLOTNICK: On that basis, your Honor, I
23 have no objection except to indicate to the Court, on the
24 fact that your Honor would impose a non-mandatory sentence,
25

1 I am concerned about the order form business because I
2 don't think this record contains one iota of testimony whether
3 an order form was supplied to my client who allegedly
4 was distributing or selling narcotics to another individual.
5

6 I think the record is devoid much that, and I
7 think we are out on 475(a).

8 THE COURT: Don't jump ahead to that because I
9 am going to give the aiding and abetting charge, so you
10 may have, your subject may come up there. I am probably
11 going to give a Pinkerton charge too, unless somebody can
12 think of some reason why I shouldn't. So I don't know
13 that that is of interest at this point.

14 MR. SLOTNICK: The second problem that I have,
15 in essence, your Honor at this point is charging multiple
16 conspiracies.

17 THE COURT: No, I am not. That is why I said
18 it seems to me that the substance and core and basic nature
19 of this conspiracy, if the jury finds the one alleged, is
20 absolutely unchanged as May 1, '71 comes and goes. It is
21 just that elements that were present both before and after
22 that date remain present and are going to be charged to
23 the jury, and the order form business, with all deference
24 to our superiors in Congress, was always a kind of strange
25 wrinkle in the law, with which we are all familiar. So

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3 So the wrinkle came out of the law. And really,
4 substantially, and legally, who cares? There might be
5 cases where it would make a difference. But I have not
6 for the life of me seen the difference here, and I must
7 say with all the papers that have been submitted to me,
8 I have not seen an analysis that suggests a substantial
9 difference that a court ought to be concerned about.

10 MR. SLOTNICK: Your Honor understands my
11 exception though, as I have placed it --

12 THE COURT: I understand you said exception,
13 yes, but I don't understand how the difference in statutory
14 setup makes a difference you could care about other than
15 for sentencing purposes in the setting of this case.

16 MR. SLOTNICK: Your Honor has set aside my
17 concern about sentencing. As to this charge, one of the
18 problems, and eventually, when we are all rested, I will
19 make a motion again for a mistrial, for a judgment of
20 acquittal and I will indicate to the Court, and I can do
21 it now that I don't think you can charge out Kotteakos and I
22 think there is a great Kotteakos problem here, and I think
23 I have seen at least two conspiracies presented by the
24 Government.

25 One is the Ramos conspiracy and the second is

2 the Sperling conspiracy and possibly even a third in between
3 the Jermain conspiracy which may have taken effect after
4 Rames went to jail.

5 It is my feeling, your Honor, that we are
6 so mandated by Kotteakos that the Government should not
7 have tried this case involving all of those conspiracies,
8 and by the mid-stream change of law your Honor is now
9 additionally adding other conspiracies for the jury's
10 consideration. I think that affects my client prejudicially
11 and one of the charges that I may have submitted, I believe
12 I submitted, is that they find whether there is more than
13 one conspiracy they must acquit as to my client.

14 THE COURT: Well, I am putting it the same way,
15 they have to find the conspiracy charged. I must say
16 in all candor that insofar as there is a problem in the
17 area to which you refer, and I agree there is one, your client
18 seems to me to be about the least affected, but that is
19 a question of judgment, and I leave you to your judgment
20 which is now spread upon the record.

21 Now let's go on.
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2 MR. FEEFFER: It would make one problem with
3 respect to Mr. Harris because if in fact his involvement
4 is said to end the government doesn't concede in December
5 1970, he is squarely in a different position than the other
6 people. His participation would be prior to May 1971, and
7 therefore, your Honor would probably lack the discretion to
8 sentence him under the later law.

9 THE COURT: So if he is convicted you want to
10 ask the jury whether they found his participation ended in
11 December 1971, for the purposes of their putting in a man-
12 datory sentence?

13 MR. FEEFFER: I am raising the problem because
14 your Honor suggested that you would have discretion presu-
15 mably because the conspiracy went from before and after.

16 THE COURT: Assuming hypothetically that he is
17 convicted, I take it Mr. Blackstone is not going to ask me
18 to find out whether I have to give him a mandatory sentence.

19 MR. FEEFFER: No.

20 THE COURT: The only question is are you going
21 to ask it?

22 MR. FEEFFER: Yes, the government is.

23 THE COURT: I will say no.

24 MR. FELD: Under the law if he violated that
25 statute, the law says there is a mandatory sentence, that

1 mandatory sentence is ten years because of a prior con-
2 viction.
3

4 THE COURT: But the jury under this thing
5 could -- I see what you mean. He has to be in the con-
6 spiracy before 1970? We will take care of that at some
7 other time if we ever reach it.

8 Could we? I may not have to sentence him. He
9 is still presumed to be innocent. I would like to get
10 rulings on the requests now.

11 Anything I said except the main point under my
12 discretion, it would be my purpose to impose non-mandatory
13 sentences in this case unless I have to be mandamus out
14 of this and I would be disposed to follow this view.

15 What practical difference does it make,
16 gentlemen? So I think we ought to just go on and rule on
17 the requests.

18 Number five goes to the general description of
19 the indictment and the order of the counts and is granted
20 in substance.

21 Number six is granted in substance.

22 Number seven is granted in substance. There is
23 a blank on page 3 of this seventh request where the govern-
24 ment considerably leaves room for the statement of the
25 defendants' position. May I ask, do defendants have a

1
2 suggestion for filling in that blank? The government left
3 a blank and said defendants' position on this element is.
4 I am not clear what the government wants to put in there,
5 or more importantly, what the defendants want me to put in
6 there.

7 MR. LEVENSON: I would oppose the language from
8 the word "thus" down to the word "as" on page 3. I think
9 in effect it is marshaling a portion of the evidence,
10 selected marshaling of the evidence.

11 THE COURT: Yes, it is, but the government at
12 this time as some times in other cases is trying to be fair
13 in that this concept bears illustration and I have said
14 here the contention to illustrate this thing and the defend-
15 ants contend on the other hand.

16 I take it from my understanding of the evidence
17 that the defendants' contention is that they had nothing to
18 do with this shipment and had no possession, constructive
19 or otherwise.

20 MR. LEVENSON: That is correct.

21 THE COURT: Is that what you want me to say?

22 MR. FEITELL: Yes, plus the chain of possession,
23 your Honor, which is covered elsewhere. This embraces the
24 whole problem about the heroin and the cocaine.

25 THE COURT: The chain of possession is something

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2 else. Let us just have the definition of the ID in
3 connection with that shipment as to which there is other
4 testimony whether you have the suitcase here or not.

5 MR. FEITELL: Well, what about the last sentence
6 on the following page, that does not appear --

7 THE COURT: Please stay with me. I am still on
8 page 3, okay?

9 MR. LEVENSON: I would add this, as to the
10 defendants' position, the defendant does not dispute that
11 Ramos -- no, I will change that. I will accept your view.

12 THE COURT: All right.

13 Now, on the next page where you were,
14 Mr. McAlevy and Mr. Feitell, I will take off the last sent-
15 ence since Mr. Feitell at least disputes that the exhibits
16 contain heroin and cocaine.

17 What are the exhibit numbers, by the way?

18 MR. FEFFER: The heroin is 68A through K and the
19 cocaine is 68L.

20 MR. FEITELL: There is another serious factual
21 discrepancy on page 3 of request number seven. It fails to
22 account the evidence, referring to that language which
23 was allegedly done pursuant to the direction of Capra,
24 Guarino and Dellacava and Jermain. The transportation of
25 this heroin to Toledo, with respect to Dellacava, there is

nothing in the record indicating that he gave a direction regarding the transportation of this item to Toledo.

MR. PEPPER: Your Honor, I think the evidence is clear that according to Ramos' testimony that the individual who they will choose to go to Ohio was designated as an associate of Dellacava's. Moreover, on Sunday in October, Ramos went with Dellacava to the railroad station and at that time inquiries were made as to how the suitcase would make its way to Toledo.

MR. FEITELL: That overlooks the fine point which I am not ready to overlook, if indeed this was Dellacava, it was instructions following, instructions given to himself and I object to putting him on the same plane with the givers of the orders.

MR. SLOTNICK: I would move to have the entire paragraph stricken.

THE COURT: Yes. Pursuant to direction or with the participation, I guess, would cover them all.

MR. PEPPER: That is fine, your Honor.

THE COURT: That is just what the government contends.

MR. FEITELL: There is also no evidence that the transportation was ever effected through the participation of Dellacava. All that ever happened was Dellacava

1
2 went, if you believe the testimony, he went to pick up the
3 timetables and gave instructions to buy a bag and that was
4 the end.

5 We don't know what happened after that and his
6 efforts in that connection were apparently aborted. So I
7 think the record is unclear on this and this adopts a point
8 of view --

9 THE COURT: It doesn't adopt anything. It says
10 this is what the government's contention is and it is an
11 arguable contention on this record and you may argue as I
12 tell you you will.

13 MR. SLOTNICK: Will your Honor give the
14 defendants' position on this element of the question?

15 THE COURT: Yes, I have gone over that.

16 MR. SLOTNICK: I would apologize to the Court
17 but if your Honor has gone over it, it has not come to my
18 attention.

19 THE COURT: I said -- well, I accept your
20 apology and I have gone over it and I will repeat it.

21 I have suggested that I understand the defend-
22 ants' contention to be that they had no connection with the
23 shipment whatever and no possession, constructive or other-
24 wise. Some of the defense counsel nodded and I thought you
25 heard it and I didn't hear you demur.

Do you want anything else said on that?

MR. SLOTNICK: And the government has not proven that beyond a reasonable doubt?

THE COURT: I am not going to put in reasonable doubt every sentence. I will charge fully on reasonable doubt.

Now, let us proceed.

MR. FEITELL: Judge, could you also state generally that there are other contentions which you will hear from the defendants themselves?

THE COURT: Yes, of course, during the summation. They will hear the summations first. I assume they will have heard them.

MR. FEITELL: Which you have already heard.

THE COURT: I am going to tell them that if I touch the evidence they will realize it is only for passing purposes of illustration and they have heard hours of summation and I am not going to summarize or give a full account of the evidence.

We are up to number eight, which is granted in substance.

Number nine is granted I think, pretty much as requested.

MR. LEVENSON: We have made comments on that,

1
2 your Honor. I am going to submit a supplemental request
3 by 5:00 or 6:00 o'clock, which was brought up before, with
4 respect to the charge that they may find either one or
5 multiple conspiracies.

6 THE COURT: Well, whenever you submit it, I will
7 look at it.

8 Number ten is granted in substance. I don't
9 say actions speak louder than words but the substance I
10 will give.

11 Number eleven is granted in substance.

12 MR. BLACKSTONE: Your Honor, it seems to me that
13 is an appropriate place to include information that we dis-
14 cussed about termination of evidence against various defend-
15 ants. It would be included in the membership aspect.

16 THE COURT: Yes, but you are supposed to leave
17 it to the discretion of the trial judge what he includes
18 where. Let's just rule on the requests, okay? That is
19 where I'm going to include it.

20 Number eleven is granted.

21 MR. SLOTNICK: In substance?

22 THE COURT: No, in full. I leave out the
23 citation.

24 Number thirteen is granted in substance.

25 Likewise, number fourteen.

1
2 MR. SLOTNICK: Is your Honor going to charge in
3 number thirteen the obviously business at the end of page 1?

4 THE COURT: No, I will probably not stop over
5 individual words, but as I say, I give the substance of the
6 charge.

7 Number fourteen is granted in substance.

8 Also, we discussed this number fifteen.

9 Number sixteen is correct, I think. Anybody
10 have any cogent reason why not? I think number sixteen the
11 way you formulated it, I want to go to the substantive
12 counts, it ought to be given with the substantive counts,
13 but I am not sure. It may not make sense, I understand your
14 problem, Mr. Feffer.

15 MR. STONE: That would be in conflict to one of
16 my requests, which is just the opposite.

17 THE COURT: Well, is yours correct?

18 MR. STONE: I would think so in the line that if
19 the substantive offense only relates --

20 THE COURT: Your client is not even charged with
21 the substantive offense.

22 MR. STONE: But if you are going to charge a
23 conspirator is also liable for the substantive offense and
24 bringing in the Pinkerton situation, that would be very
25 explicit only referring to the defendants named in the sub-

stantive count.

THE COURT: I am talking about the substantive count. Only four people are named.

MR. STONE: You used the word conspirators and refer again to the substantive counts and the jury can get the impression that you are referring to everyone as part of the conspiracy. It is undue emphasis on the persons named in the conspiracy who are not named in the substantive count.

THE COURT: Well, if I understand your intention, which I doubt, I disagree with it.

MR. STONE: I will agree you don't understand it.

THE COURT: All right.

MR. SLOTNICK: We would object to the Pinkerton charge.

THE COURT: I asked you before if you objected and you tell me why. What is the grounds of your objection?

MR. SLOTNICK: The matter is that Pinkerton at this point is or will be old hat. Once the substantive act is committed, the conspiracy ends and the act is completed and it should not be held responsible for both and it is a matter of double jeopardy.

THE COURT: It is arguable but district judges

aren't supposed to know what is old hat and isn't and the Supreme Court hasn't yet overruled it, so I guess I will follow it.

Seven'een I will deny in line with my view that I want to limit to the extent possible dealing in the charge with evidence.

You may argue evidence but I don't give this.

MR. PEPPER: This would be academic because it referred to the testimony --

THE COURT: It is withdrawn?

MR. PEPPER: It is withdrawn.

THE COURT: Number eighteen refers to informants. Who do you refer to, who do you mean? What do you mean by informants and who do you refer to when you say accomplice?

MR. PEPPER: Your Honor, for example, Conforti would probably be more often characterized as an accomplice because he was actually out working for the government as opposed to an individual like Earl Simms who was on the streets supplying information and that is the classical informer. But I think the distinction is close.

THE COURT: Do you want me to charge separately about informants and accomplices?

MR. PEPPER: Your Honor, I think this point can be made: I think obviously there will be great emphasis on

1
2 defense counsels' summations as to informants and accomplices
3 and probably this could be handled together somehow.

4 THE COURT: The standard I take it, is pretty
5 much the same, the same scrutiny with care, caution and so on?

6 MR. PEPPER: Yes, your Honor.

7 THE COURT: Who is covered in that, Ramos and
8 Conforti?

9 MR. PEPPER: And Simms.

10 MR. LEVENSON: Sassone might also be covered in
11 that. He wasn't charged, named as a co-conspirator, but he
12 could be criminally liable, criminal liability could attach
13 to what he testified he did.

14 THE COURT: Do you want him included under the
15 scrutiny with care?

16 MR. LEVENSON: Yes.

17 MR. PEPPER: We would object to this. Your
18 Honor, number one, there is no testimony given by him which
19 could make him liable for criminal prosecution. He was not--

20 THE COURT: That is as it may be.

21 MR. PEPPER: He certainly is not an accomplice
22 to this narcotics conspiracy unless he has knowledge and --

23 THE COURT: I think in general he could be
24 looked upon as an accomplice in wrongdoing and that is the
25 general rule.

MR. PEPPER: That might bring out the distinction between the informant and accomplice. He's not an informant, there is no question about that. He was asked to testify and he testified to what took place.

MR. SLOTNICK: I will ask your Honor to charge that the acts and statements of informants, the hearsay acts, could not be considered by the jury as being in furtherance of the conspiracy and should be stricken. I think I made that application once as to Simms and my client and now we have the broad application, the Itkin doctrine where a man is an informer or co-conspirator, if he could be a conspirator, naturally his hearsay statements can be binding against the defendant but that the reverse is not true.

THE COURT: Let me understand that. Do we have because you people know more about the record than I do, do we have evidence on which the government relies of acts or statements by Simms after he became an informant, being invoked against anybody in this case?

MR. FELD: No.

THE COURT: I didn't think so.

Do you say there is any evidence that you want me to instruct the jury about?

MR. SLOTNICK: Not that I know of.

THE COURT: Neither do I, so it is of no

1
2 consequence. Certainly if there were anything going on
3 after he became an informant, it involved Guarino and Capra
4 and any of those and if anybody suggested it could be used
5 against them I would certainly want to see the suggestion
6 cured, but there isn't that suggestion.

7 MR. SLOTNICK: Part of our defense is that he
8 became an informer in Cleveland.

9 THE COURT: Yes, I know that is part of your
10 defense.

11 MR. SLOTNICK: If your Honor charges informer
12 versus co-conspirator, we would ask that we have an
13 informer charge as against Ramos post-Cleveland.

14 THE COURT: What is post-Cleveland?

15 MR. SLOTNICK: May 6, 1970.

16 THE COURT: 1970?

17 MR. SLOTNICK: 1971, when he was arrested in
18 Cleveland and released five days later.

19 MR. PEPPER: I am not sure I know what he is
20 talking about, what he wants your Honor to charge. How does
21 that reflect on the law?

22 THE COURT: He hasn't submitted any request that
23 I know of. Until I see it I am not going to start debating
24 about it now. Submit it in the morning.

25 MR. PEPPER: Your Honor, I think reading

1
2 eighteen and twenty-two, which has to do with accomplice
3 testimony, that the substance of both requests be given
4 whether given jointly or separately. Really it makes no
5 difference.

6 THE COURT: How do they differ?

7 MR. PEPPER: When you talk about an informer
8 you talk about relying on a certain type of people and the
9 use the government makes of informants.

10 THE COURT: I talk about that in the charge I
11 give on accomplices.

12 MR. PEPPER: Then there is no problem.

13 THE COURT: Now, nineteen, do we need that?

14 MR. SLOTNICK: Yes, the defendants would
15 suggest that is a necessary charge.

16 MR. FELD: Yes, Mr. Sperling.

17 THE COURT: All right.

18 MR. FEITELL: I am not sure about that, Judge.
19 It seems to me Sperling's most recent conviction grows out
20 of facts which are contemporaneous with the facts --

21 THE COURT: The request doesn't refer to any
22 specific conviction.

23 MR. FEITELL: I am aware, I am singling out this
24 one.

25 MR. McALIVY: I don't think you can charge

Sperling's conviction in any event since he has an appeal pending.

THE COURT: But he has other convictions in the past. This request doesn't say I should refer to any specific conviction. Try reading it.

MR. McALEVY: Yes, sir. I read it.

THE COURT: What are you objecting to, Mr. Feitell?

MR. FEITELL: I withdraw my objection, Judge.

THE COURT: Mr. McAlevy?

MR. McALEVY: I withdraw mine.

THE COURT: Please read them and help me as we go along.

Twenty is granted in substance.

Twenty-one is the kind of instruction I prefer not to give. Anybody planning on arguing about uncalled witnesses?

MR. FEITELL: Yes, I am going to.

THE COURT: All right. Which witness?

MR. FEITELL: Well, the witnesses who would know something about the money.

THE COURT: Who?

MR. FEITELL: We don't know their names, it never came out. Talking about the incident, for example, in

front of Rockefeller Center in the vicinity of the statue where the jury may have the impression. All we have in the record is that the money is in the bag and the officer's hands and we never find out from the record where it came from and no money is here nor is the bag here.

THE COURT: I will give request number twenty-one. I told you I'd like to skip number twenty-one.

MR. STONE: I object and suggest we solidify our positions by tomorrow morning. That would be an unfair request to the defendants.

THE COURT: No, it is not an unfair request if Mr. Feitell is going to make the argument he is going to make, because it is true. He could subpoena these people and it is true he has the right of discovery if he wanted the names of any of these people.

MR. STONE: I don't think it implies --

THE COURT: Let's get the position clear, gentlemen. I prefer where possible not to have the jury speculate about people who are not called, especially in a case where they heard almost 50 witnesses who were called.

But if there are arguments about uncalled witnesses, in those instances I give this charge about the power of both sides to subpoena anybody they want to bring here and I am saying simply if this argument is made, I will

give this request.

MR. FEITELL: Then you have the reverse of the request if I make the argument on the factual background but don't call for the request?

THE COURT: No, the government called for the request. I say I will deny it, they wanted to counter your arguments and that is why they asked for this number twenty-one. Are you with me, Mr. Feitell?

MR. FEITELL: I am here, your Honor, and I see and I am reading these things along with you and maybe we see things differently.

THE COURT: I am going to grant number twenty-one and that is why I asked you if you were disposed to argue that the failure to call witnesses. If you are not, if no defense counsel is going to argue that, I will deny number twenty-one.

MR. FEITELL: I haven't planned my summation.

THE COURT: We have to help each other, so you tell me tomorrow morning whether in the light of this discussion I should grant or deny twenty-one. All right?

MR. FEITELL: Very well.

THE COURT: Twenty-two is granted in substance. We discussed that.

Twenty-three is withdrawn, I assume.

Twenty-four is withdrawn or inapposite.

Twenty-five is granted.

MR. SLOTNICK: The testimony is varied from four to six years to life. This would not --

THE COURT: That is why I am giving it.

Twenty-six is denied.

Twenty-seven I will deny B unless somebody thinks there is any use in it and the others I will grant.

MR. SLOTNICK: Is your Honor charging seventeen?

THE COURT: In connection with reasonable doubt.

MR. SLOTNICK: Will you also charge prejudice in the general charge, motivated by sympathy or prejudice?

THE COURT: Yes, I will charge prejudice somewhere.

MR. STONE: You are not going to charge punishment and put it anyplace in your charge, are you?

THE COURT: Yes. I granted it a little while ago, number twenty-five.

MR. STONE: That one is missing in this document.

THE COURT: Well, I will charge it.

I have Mr. Slotnick's requests. He has two sets and we will go in order and take the first set.

Number one is denied in the form of its submission.

Number two is --

1
2 MR. SLOTNICK: Exception, your Honor.

3 THE COURT: Yes, and by the way, if you except
4 as you have, I think there is an exception to anything I
5 deny. But if you want to specifically except, go ahead.

6 Let me suggest, gentlemen, that defense counsel
7 in any cases where you have exceptions to my denial of your
8 requests, get up copies of your requests and we will mark
9 them as Court exhibits.

10 MR. FEITELL: Your Honor, in labelling
11 Mr. Slotnick's request, those are also my requests.

12 THE COURT: All right. Let us now indicate that.
13 Get up copies of them and we will mark them as Court
14 exhibits if there is ever any question elsewhere, everybody
15 will know what we are talking about.

16 (Continued on next page.)

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pm

MR. FEFFER: Your Honor, we can mark the copy of all the requests that we have as a Court exhibit.

THE COURT: Is it clean?

MR. FEFFER: Yes.

THE COURT: Okay. Work it out with defense counsel and we will mark it tomorrow.

MR. FEFFER: Fine. Your Honor, on this same subject it might be good to point out at this time that for the 3500 material we have a list of all 3500 material and will present it to defense counsel, and they can look at it and determine whether they have actually received everything that we have there.

THE COURT: Okay. We don't need to do that now. Let's proceed with these requests. It is now five o'clock.

Is Request No. 2 wanted? If it is I will give it. But it seems to me I have been relatively quite in this trial.

MR. SLOTNICK: I request it, your Honor.

THE COURT: All right. I will grant it.

Number 3 is granted in substance.

Number 4 is granted in substance. The word "unhesitatingly" in the second full paragraph I think is not a proper one to use. And I won't use it.

And on the next page, I think our Circuit, Mr.

Slotnick, has spoken explicitly against this moral certainty language. So I will not give that.

Number 5 is granted in substance.

MR. FELD: Your Honor, the last sentence of that paragraph, moral certainty, about two conclusions, I take it is not in your charge.

THE COURT: Oh, yes. I am leaving all of that out. I am sorry. From the words, to a moral certainty, to the end of that paragraph is denied.

Number 5 is granted insubstance.

MR. SLOTNICK: We would except on the consistent, inconsistent.

THE COURT: Okay.

Number 6 --

MR. SLOTNICK: Number 5?

THE COURT: I grant it in substance.

Number 6 I grant in substance.

Well, I have already granted the substance of Number 7 to the Government, so it is granted.

MR. SLOTNICK: That is the way we would desire it, your Honor.

THE COURT: Well, that is not the way I am going to give it. The second paragraph I will give the beginning in stating the burden of proof and so on.

Number 8 is denied.

Number 9 is granted in substance.

Number 10 is granted in substance.

Number 11 is granted in substance.

Number 12 is granted in substance.

Number 13 repeats Number 12.

Number 14 is denied. You may argue that business about interest. I am not going to go into all that.

Number 15 I will grant the first part and deny the last eight lines.

Number 16 --

MR. SLOTNICK: May I have a moment, your Honor?

As to that again I specifically except to your Honor's refusal to charge that.

THE COURT: Number 16 is granted in substance except that the last three sentences are denied.

MR. SLOTNICK: Same exception, your Honor.

THE COURT: Number 17 is denied.

MR. SLOTNICK: Same exception.

THE COURT: Number 18 is granted in substance.

MR. FEEFFER: Your Honor, I would object to 18. The testimony has come out already that his concern at this present moment for his Ohio sentence is non-existent. He has already been promised that it is going to be vacated

1 to two years, so that concern is a bygone. He may have
2 other concerns with respect to his parole situation but
3 not --
4

5 THE COURT: Wait a second. All right. I am
6 sorry. Maybe I am misleading you. When I say granted
7 in substance, you can argue about the specific facts. I am
8 just going to charge the law about they can look at
9 interest, at promises, at hopes of leniency and so on. You
10 can go talk about the Toledo sentence. That is what I mean
11 by substance.

12 Now in fairness to all of you, it may happen,
13 though I do not intend to mislead you, that when I say I am
14 going to give the substance you will conclude that I didn't
15 give the substance. Well, in that case, that is why we
16 have the exceptions after the charge, but I mean to be giving
17 you as straight a story as I can.

18 19 is granted in substance.

19 20 seems inapposite to me. Does anybody think
20 otherwise?

21 Well, it is denied.

22 MR. SLOTNICK: May we have a moment, your Honor?

23 Your Honor, it may be inapposite in the exact
24 wording, but in substance I am asking the Court to charge
25 the theory of Pratt, that being around when a crime is

committed does not necessarily indicate that you have knowledge, awareness or a part in that crime.

THE COURT: The gist of this one sentence request doesn't convey that. It talks about sales to a Government agent. Counsel should make requests that are helpful. It is denied.

21, the substance of it will be in the charge. I will not refer to due process of law which I don't think has too much to do with this, at least as we charge jurors, but therest of it I think will basically be there.

22 is granted in substance.

23 is granted in substance.

24 is denied.

MR. SLOTNICK: I would then except to your Honor's refusal to charge 8, 14, 24.

THE COURT: Okay. Now the supplemental requests for Capra.

MR. FEITELL: I am joining in those.

MR. MC ALEVY: I would join in those too, your Honor.

THE COURT: All right, Request Number 1 is granted in substance.

Request 2 is granted in substance, except that I don't agree that association is no evidence of guilt.

It may be part of the evidence. But that may be a quibble.

Request Number 3 is granted in substance.

Request Number 4 in the form of that one sentence is denied.

Request Number 5 is granted in substance.

Number 6 is granted in substance.

Number 7 is denied.

Number 8 is denied.

Number 9 is granted in substance.

Number 10 is denied in the form that it is given.

I am going to tell them in general about scrutiny and prior inconsistent statements. You can argue about perjury.

Number 11 is granted in substance.

Number 12 is denied.

Number 13 is granted in substance.

Number 14 is granted in substance except the last sentence which is denied.

Number 15 is granted in substance.

Number 16 is granted in substance.

Number 17 is granted in substance.

Number 18 is granted in substance.

Number 19 is granted in substance.

Number 20 is denied.

MR. SLOTNICK: Number 20, your Honor understands

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1 is my Kotteakos point.

2 THE COURT: Okay.

3 MR. SLOZNICK: May I for the record, your Honor,
4 except to your Honor's refusal to charge Number 4, Number 7,
5 Number 8, Number 10, 12, 14 and 20.
6

7 THE COURT: All right. Mr. McAlvey's requests
8 run on and on. I mean the numbers are hard to deal with.
9 But let me say that I believe it is correct to tell you
10 that one will be given in substance.

11 Number 2 is denied.

12 Number 3 is granted in substance.

13 Number 4, I am not going to give that last
14 sentence, because I don't really understand it. And the first
15 two sentences will be given in substance.

16 Number 5 is granted in substance.

17 Also Number 6.

18 And Number 7 we have talked about, and I think
19 it is correct to say it will be granted in substance.

20 MR. FEFFER: Your Honor, can you repeat the
21 first three, I am sorry, we were looking for the document
22 when you were reading them.

23 THE COURT: First one granted in substance. That
24 goes on to Page 5.

25 Number 2 is denied; Number 3 granted in substance.

1
2 Now the additional request of defendant
3 Dellacava is denied unless I misconceive the import of
4 what is arguably shown by the evidence. I assume that
5 the theory on which the Government offered it and the
6 theory on which I allowed it to be received would make the
7 evidence surrounding Mr. Dellacava's arrest in April of
8 this year evidence which does arguably show some involvement
9 after the period that this request contemplates is the
10 entire period. And therefore, as I told you earlier,
11 Mr. Feitell, although I will let you argue this, I certainly
12 don't think I can grant this additional request. It is
13 denied.

14 Now, I want to give you an opportunity, in
15 light of that, to say whether you want the kind of, how shall
16 I say, quasi limited marshalling that Mr. Stone and Mr.
17 Blackstone and Mr. Levenson have asked for. And if you
18 do, since I haven't had any form of that from you, I
19 think you had better get it in tomorrow morning, or unless
20 you know that you don't, which is what you indicated earlier,
21 in which case I will forget about it.

22 MR. FEITELL: Leave it the way it is, although
23 I think in denying my application, which your Honor is
24 doing, you are not taking into consideration the possibility
25 that what we are dealing with in respect to the time of

Mr. Levenson, who called him on behalf of Mr. Jermain.

What that means is that all of his testimony is erased from this record and the only way this can work fairly to everybody is for you to follow that instruction implicitly, absolutely disregarding everything that he said and treat it as if it never happened.

Once or twice at the instance of one of the attorneys or another or three or four at times, I have had occasion to give you similar instructions, and, again, the only way you can do justice and follow the rules that we try to administer at the side bar conferences and elsewhere, is to obey those instructions. You must disregard everything that is stricken. Mr. Matro and his testimony are for our purposes erased from this record. Don't think about him, ignore anything he said.

All right, is there now further evidence for the defense?

MR. SLOTHICK: Capra rests.

MR. MC ALVY: Guarino rests.

MR. FEITELL: Dellacava rests.

MR. BLACKSTONE: Harris rests.

MR. LEVENSON: Jermain rests.

MR. STONE: Morris rests.

MR. PEPPER: There is the matter of giving the

1 rag 7

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2 jury the telephone exhibits.

3 THE COURT: All right.

4 Those have all been typographically handled?

5 MR. PEPPER: Yes, your Honor.

6 THE COURT: All right.

7 MR. MC ALEVY: I just want to look at them because
8 I have not been tendered those documents today.

9 MR. PEPPER: They are the same ones tendered
10 yesterday. They have been tendered at least five times.

11 MR. MC ALEVY: I haven't seen them today and I don't
12 want to argue.

13 MR. FELD: Then don't.

14 THE COURT: All right.

15 While the ladies and gentlemen of the jury are
16 looking at those, it is convenient for us to have a side
17 bar conference that won't inconvenience them so let us do it.

18 (At the side bar.)

19 THE COURT: First, if there are any motions that
20 people want to make to preserve their record, I will hear
21 them.

22 MR. SLOTNICK: On behalf of the defendant Capra
23 I move the Court for a judgment of acquittal.

24 THE COURT: I take it you all make the same
25 motion?

MR. MC ALEVY: The same and we renew all the motions we made at the conclusion of the government's case.

THE COURT: All right, those are denied.

MR. SLOTHICK: And each and every motion made during the case and before the case began.

MR. MC ALEVY: We all join together.

THE COURT: I have heretofore ruled on all motions pending, leaving open the possibility of any post-verdict motions on intent, the possibility of such motions and the rulings heretofore made are reaffirmed.

MR. BLACKSTONE: Your Honor, it is 12 o'clock and it seems to me that if we are going to begin summations that we could take everyone's summation, including the government's in the same day by sitting a little bit late.

THE COURT: We are not going to do that. I don't want to relitigate that and I don't want to relitigate most other things.

What I think I am going to do is direct Mr. Stone to proceed with his summation --

MR. LEVENSON: Your Honor, we have agreed that I would start.

THE COURT: How long is yours?

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by my office I stand corrected.

THE COURT: Let's stand corrected because they seem anxious to correct you.

MR. FELD: The affidavit Mr. Slotnick was using on cross examination, the affidavit in support of the Ramos wiretap mentions the name of Detective James Fox.

THE COURT: Do you want this to go any longer or keep pursuing it?

MR. SLOTHNICK: I stand corrected. Now that I stand corrected and we have the correct name may Detective Naumens or Jackson call their office?

THE COURT: I just finished taking care of that, Mr. Slotnick, and they said they would help you. Go on to the next thing.

MR. SLOTHNICK: My next thing is to release Patrolman Fox and thank him and apologize for any inconvenience we caused him or the Police Department.

THE COURT: Anything else?

MR. SLOTHNICK: I would like to take up next an article in the New York Magazine, a front page article apparently showing a young man with a protruding navel with some money and a revolver. I believe it is a .38 revolver and a slug under it "How crooks buy their way out of trouble."

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2 This is the lead story of the magazine in which
3 some individuals are named and mentioned and one of whom
4 I believe is mentioned during the course of this trial,
5 Mr. Sanfardino. I recollect his name being mentioned.
6 His name was mentioned during Detective Mawens or
7 Jackson's testimony. I may be incorrect.

8 THE COURT: All I can say is that this is among
9 the things I don't remember if it happened but in any event?

10 MR. SLOTNICK: The story concerns several pages
11 and alleged plots to buy some evidence that has some
12 connection with this case in view of the fact that it
13 discusses the indictment of some 91 suspected narcotic
14 dealers last April in federal drug conspiracy cases.

15 It mentions things like, at page 47, which
16 occurred in this case, money, or allegedly occurred,
17 money being placed in trunks of cars, barbershops and
18 various and sundry other things.

19 THE COURT: For purchasing narcotics?

20 MR. SLOTNICK: That is correct, cocaine.
21 The story is about several individuals who were arrested
22 at the same time that the defendants in this case were
23 arrested and arraigned as part of that sweep that we learned
24 about during the pretrial hearings. It contains several
25 photographs which were government property, one I believe

1
2 is a public record and one of which I have been told is
3 not a public record. It is a photograph of four
4 individuals with numbers above their heads as they have
5 been numbered and labelled in this case and in front of
6 a barbershop. I do not believe that these photographs
7 are a public record.

8 THE COURT: What four individuals are those?

9 MR. SLOTNICK: Those are individuals --

10 THE COURT: Anybody involved here?

11 MR. SLOTNICK: The similarity of the individuals--
12 they are not involved in this case as far as I know.
13 The similarity --

14 THE COURT: The barbershop, is it the barbershop
15 we heard about in this case?

16 MR. SLOTNICK: As far as I know it is not.
17 However, the similarity and knowing this photograph, which
18 apparently is released by some governmental agency, this
19 is not a part of the public record, also contains inter-
20 views with people in law enforcement.

21 This article comes out at a very unfortunate
22 and inopportune time.

23 I would like to submit this to the Court to be
24 marked as a court exhibit for the Court to look at it.
25 The basic tenor of the article is in great symmetry and

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2 similarity with the basic tenor in this case. Various
3 people in Harlem allegedly in a narcotics conspiracy with
4 tape recordings made and individuals using tape, in which
5 bribes were accomplished, money passed in trunks of cars
6 which were used.

7
8 If you blank out the names you could probably
9 have a transcript of this trial as being rather similar.
10 I would indicate to you that atleast, or at most I make
11 a motion for amistrial based upon the facts in this article
12 released at this unfortunate and inopportune time.
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1 THE COURT: Is that the current issue of that
2 magazine?
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4 MR. SLOTNICK: It is dated November 19, 1973.

5 THE COURT: Well, if I don't grant what you are
6 asking for, either at least or at most, which I am not
7 going to grant, as you probably could have suspected --

8 MR. SLOTNICK: Well --

9 THE COURT: Wait a second. Look, when I am in
10 the middle of a sentence I don't really appreciate your
11 breaking in on me.

12 MR. SLOTNICK: I apologize.

13 THE COURT: Even if it is a long sentence.

14 MR. SLOTNICK: I apologize.

15 THE COURT: If I don't grant that, what other
16 applications do you have?

17 MR. SLOTNICK: Well, under the power of sanction
18 that this Court has, its discretionary power and its super-
19 visory power over the office of the United States attorney,
20 I would ask again for a mistrial based upon a separate ground

21 Now, I think what has occurred, your Honor, is
22 that the Government should be sanctioned for their activities
23 that run throughout this case. If your Honor will recollect
24 during the course of the pretrial hearings, we learned,
25

1 as Government Exhibit 68 in evidence. Will you open it
2 up please?

3
4 A Yes.

5 Q Are you familiar with Government Exhibit 68
6 and its contents, which is 68A through M, I believe?

7 A Yes, I am. Yes, I am familiar with this.

8 Q Did you conduct an examination of its contents,
9 specifically chemical analysis with respect to samples from
10 each of the plastic bags contained therein and received in
11 evidence in this case?

12 A Yes, sir, I did.

13 Q Tell us when you did that.

14 A I started yesterday afternoon, sir.

15 Q Did that continue into today?

16 A Yes, sir. I completed the examination this
17 morning.

18 Q Where was that conducted?

19 A At the NOrtheast Regional Laboratory of the
20 Drug Enforcement Administration.

21 Q Is that located in Manhattan?

22 A Yes. It is in New York City.

23 Q Could you tell us your findings?

24 A Yes, sir. I found that samples which I removed
25 from the bags which weremarked Government Exhibit 68
